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Misuse of the Right to Family Reunification

Marriages of convenience and false declarations of parenthood

Focussed Study of the German National Contact Point
for the European Migration Network (EMN)

Working Paper 43

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Misuse of the Right to Family Reunification

Marriages of convenience and false declarations of parenthood

Focussed Study of the German National Contact Point for the European Migration Network (EMN)

Andreas Müller

Federal Office for Migration and Refugees 2012

Summary

Family reunification paces special challenges for the management of migration activity within the European Union. The number of persons involved in family reunification alone makes it the most important migration channel not just within the EU but in the entire industrialised world. In 2010, family reunification accounted for 757,074 new residence permits issued in the EU which represents 30 percent of total migration numbers. Unlike immigration for the purpose of employment, the political management of family reunification faces much greater difficulties as the legal core of family reunification is among the recognized fundamental rights. Accordingly, monitoring this migration channel is intended to ensure that only actual family members are accorded this right and that the institution of the family does not become a means to an end in terms of migration.

The socio-legal definition of the core family consisting of two parents and their underage children provides the starting point for family reunification in Germany. Yet the social definition of the family in this context makes it both possible and difficult to prevent the misuse of family reunification. The social definition of marriage makes it easier to tighten up checks on the subsequent immigration of spouses insofar as the latter is not just tied to the formal criterion of marriage but on the spouses living together as a family unit. Yet contrary to this, the social definition of parenthood renders it more difficult to tighten up checks on the immigration and residence of the foreign parents of German minors as both biological parenthood and the social and family relationship between father and child are in themselves sufficient grounds for being accorded the right to family reunification. In conjunction with case law that is oriented to the welfare of the child, foreigners authorities continue to find it difficult to prove misuse.

At the European level, Council Directive 2003/86/EC of 22 September 2003 constitutes the legal basis of the right to family reunification. The Immigration Act (Zuwanderungsgesetz) of 2004 transposed the right to family reunification into the German residence regulations.

Family reunification is monitored in a two-stage procedure: if the relationship is constituted between persons who are already present in Germany, the registry offices are the first authorities to carry out checks, whereas the German missions abroad are the first authorities to carry out checks on foreigners immigrating to Germany for the purposes of family reunification. Second, more intensive checks are subsequently carried out by the foreigners authorities as part of the application procedure for residence permits.

Owing to the limited informative value of the statistics available, it is not possible to make any reliable statement on the level of misuse of family reunification or on the number of counter-measures needed.

Content

1 Introduction

Within the overall picture of immigration to the Member States of the European Union, migration for the purpose of family reunification plays an important role. Consequently, the question arises how the Member States assure that only actual family members benefit from the right to family reunification by preventing the misuse of this migration channel. The present study provides an overview of the political and practical measures taken by the Federal Republic of Germany. The study was conducted in 2012 as the German contribution for the European Migration Network EMN, which provided in spring 2012 an overview of the Member States' policies regarding the misuse of family reunification. The first part of this paper describes the legal foundations for subsequent immigration of spouses as well as the policy and practical measures to prevent marriages of convenience. In addition, the available statistics are explored and interpreted. In the same way, the second part analyses the possibilities for immigration for foreign parents of German children as well as the respective control mechanisms.

2 Marriages of convenience

2.1 Legal basis and definitions

Section 1353 of the German Civil Code (Bürgerliches Gesetzbuch) provides the statutory basis for marriage which says that the spouses have a mutual duty of conjugal community; they are responsible for each other. This definition does not presuppose that both spouses have a joint place of residence, it is their emotional and personal ties and the fact of the spouses being there for one another that is crucial (Weichert 1997; Göbel-Zimmermann 2006).

Similar provisions apply to same-sex lifetime partnerships (Sections 1 and 2 of the Lifetime Partnership Act) (Lebenspartnerschaftgesetz). Section 27 subsection 2 of the Residence Act stipulates that the right to family reunification shall apply to enable the establishment and maintenance of a registered partnership in the federal territory, similar to the right to the subsequent immigration of spouses.

Marriages that have been entered into or kinship established solely for the purpose of enabling the subsequently immigrating persons to enter and stay in the Federal territory as well as marriages not aimed at both spouses living together as a family unit (marriages of convenience) are explicitly exempt from the right to family reunification. The same applies to same-sex life partnerships.

Cohabitation is not deemed equivalent to marriage and therefore does not substantiate any right to family reunification.

The right to live together as a family is protected by the Constitution in Germany: "Marriage and the family shall enjoy the special protection of the state." (Article 6 para. 1 of the Basic Law, Grundgesetz). The legal entitlement to family reunification is derived from this (Sections 27et seq. of the Residence Act).

- For the purposes of subsequent immigration to join a foreigner, Section 29 subsection 1 (1) and (2) of the Residence Act says „the foreigner must possess a settlement permit, EC long-term residence permit or residence permit" and „sufficient living space must be available". In addition to this, both spouses must be at least 18 years of age, the spouse moving to Germany must be able to communicate in the German language (Section 30 subsection 1 (1) and (2) of the Residence Act) and the foreigner's livelihood must be secure (Section 5 subsection 1 (1) of the Residence Act).

- The residence permit shall be granted to the foreign spouse of a German „if the German's ordinary residence is in the Federal territory" (Section 28 subsection 1 of the Residence Act). Pursuant to Section 28 subsection 1 fifth sentence in conjunction with Section 30 subsection 1 (1) and (2) of the Residence Act, both spouses must be at least 18 years of age and the spouse moving to Germany must be able to communicate in the German language.

The foreigner moving to Germany to join his/her spouse acquires an independent right of residence after residing in the Federal Republic for three years irrespective of the spouse he or she has joined (Section 31 subsection 1 of the Residence Act). The scope of the right of foreigners joining EU nationals is broader than that of foreigners joining German nationals and third-country nationals. Children of EU nationals who are under 21 years of age are entitled to family reunification. Furthermore, foreign spouses joining EU nationals are not required to prove that they have knowledge of the language (Sections 3 and 4 of the Freedom of Movement Act/EU).

German residence regulations do not explicitly define marriages of convenience. However, the Residence Act rules out the possibility of family reunification if it is established that the marriage has been entered into or kinship established solely for the purpose of enabling the subsequently immigrating persons to enter and stay in the Federal territory (Section 27 subsection 1a

(1) of the Residence Act). This restriction applies to all relationships entered into merely „for the sake of appearances".

Case scenarios involving „progressive family reunification" play a special role in terms of marriages of convenience. They involve third-country nationals using marriages of convenience in order to acquire an independent right of residence and on this basis to have foreign children from previous relationships immigrate subsequently to Germany as dependents (Hartmann 2008: 349et seq.).

2.2 Policy to control and prevent misuse

2.2.1 Political development

Marriages of convenience have been the subject matter of debate since around the mid-1980s and even more so since the 1990s in the course of and following the restrictions to the right of asylum. As a result of this debate, the amendment to the right to enter into marriage of 1998 (Act governing the right to enter into marriage, Eheschließungsrechtsgesetz) expanded the rights of registrars, actually obliging them to deny persons who are obviously entering into a marriage of convenience the right to get married (Hartmann 2008: 263 et seq.).

At present, there is evidence that the public debate is flagging. This phenomenon attracted public attention once again in the case of a local politician in Hamburg who was facilitating a marriage of convenience (Welt online 29.06.2010). Contrary to the debate among the public at large, the issue of marriages of convenience continues to feature prominently in discussions in the Land Parliaments and among experts on the subject. At regional level, criticism levelled at the actions of foreigners authorities aimed at preventing and detecting marriages of convenience fuelled the debate on the subject. The general suspicion foreigners authorities tend to harbour vis-à-vis binational marriages and the failure to observe the privacy of the persons concerned owing to investigations conducted by the foreigners authorities above all have been criticised within the framework of minor interpellations. Similar criticism has been voiced by Verband Binationaler Familien und Partnerschaften iaf (Association of Binational Families and Partnerships). However, it is not yet possible to establish what impact this criticism is having on federal policy-making. At regional level, this type of interventions has led to the disclosure and occasionally even to the suspension of particularly controversial control practices in individual cases.

2.2.2 Measures aimed at preventing misuse

The legal prerequisites for preventing marriages of convenience were created by the amendment to the Act governing the right to enter into marriage and the exemption clause in Section 27 subsection 1a, (1) of the Residence Act which provide the legal basis that permits both registrars and foreigners authorities to investigate the motives of persons entering into a marriage (Eberle 2008a: 16). The fact that marriages of convenience are subject to criminal prosecution under Section 95 subsection 2 (2) of the Residence Act also has a deterrent effect. It says that any person who furnishes or uses false or incomplete information in order to procure a residence title and is therefore claiming the intention of living together as man an wife is committing a criminal offence (Eberle 2008b: 28). The obligation of the foreigners to cooperate (Section 82 of the Residence Act) and prove that they are planning to live together as man and wife seems to be just as important in terms of prevention as the relevance of marriages of convenience under criminal law (see as voll as Section 2.5 - Franßen-de la Cerda 2010; Albrecht 2008: 6).

Based on this legal situation, the incident-related checks carried out on binational marriages as well as the incident-related examinations of applications for a residence permit based on marriage represent the key tool for preventing marriages of convenience. In addition, an initial examination is carried out as part of the visa application process anyway.

In addition to preventing an initial residence permit from being granted, different procedures are used at local government level to prevent suspected marriages of convenience from leading to long-term residence. In this regard, the practices outlined in the following are not representative, but are merely examples of specific case scenarios. The foreigners authorities in Hamburg, for instance, grant residence permits for 18 months only, i.e. before the three-year period pursuant to Section 31 subsection 1 (1) of the Residence Act elapses, if they have any doubts that the couple are living together as man and wife. This prevents the spouse immigrating subsequently from obtaining an independent right of residence; instead renewed

checks are carried out before the residence permit is extended. If there are serious doubts about the couple living together as man and wife that, however, pose insufficient grounds for refusal to grant the residence permit, the foreigners authority defers its decision and notifies the State Criminal Police Office. This in turn prompts the launch of criminal investigations which allow for much more comprehensive checks to be carried out on the applicants than would be possible within the framework of checks carried out by the foreigner authority. The foreigners authority is given access to any evidence gained by the above-mentioned means (Freie und Hansestadt Hamburg 2004). With this procedure, checks may be carried out using police investigation methods before a residence permit is issued to facilitate family reunification. It is not known to what extent this practice is being used in other Federal Länder.

In addition to these measures, cases are also known in which the Ministries of Home Affairs, for instance, that of the Land of Brandenburg, have responded to publicity campaigns propagating marriages of convenience (www.schutzehe.de). The above-mentioned website, for instance, published recommendations for action, advising (future) married couples how to prepare for interviews conducted by the foreigners authority and registrars which prompted the Ministry of Home Affairs of Brandenburg to launch awareness-raising measures (Landtag Brandenburg 2004).

No systematic information campaigns are organised for potential visa applicants. Some German missions abroad such as the German mission in Ankara provide information about the possibility of subsequent expulsion of persons providing incorrect information when they apply for a visa.[1]

2.2.3 Investigations aimed at uncovering cases involving misuse

The majority of indicators rated by the foreigners authorities as initial grounds for suspecting a marriage of convenience are regulated in the General Administrative Regulations relating to the Foreigners Act. As such, grounds for initial suspicion exist

- if the husband and wife provide conflicting personal details, conflicting details about how they met or any other conflicting information,
- if the couple had not met before they got married and if they do not speak the same language,
- if an unusual sum of money is paid for entry into the marriage,
- if there are concrete grounds to suspect that the parties have entered into marriages of convenience before
- or if the life partner or spouse subsequently immigrating has previously resided unlawfully or for the purpose of filing an application for asylum in another EU Member State (General Administrative Regulations relating to the Foreigners Act, AVwV AufenthG 27.1a.1.1.7).

In addition, the foreigners authorities in the individual Federal Länder consider the following indicators to be grounds for suspecting a marriage of convenience:

- if the partner immigrating to the Federal Republic had previously expressed the intention to marry somebody else,
- if the partner subsequently immigrating to Germany is obliged to leave Germany or is at risk of being obliged to leave Germany in the near future,
- if the spouses do not live together after they get married or the partner subsequently immigrating to Germany had been recently married to another foreigner who did not have a secure residence status.

The following is also regarded as grounds for initial suspicion, depending on the competent foreigners authority:

- if the partner immigrating to the Federal Republic had got married several times before in quick succession and is intending to remarry a former spouse after obtaining a residence permit,
- if obligations to pay maintenance are not being met

1 http://www.ankara.diplo.de/contentblob/360572/Daten/44889/Erklaerung_Antrag_auf_Erteilung_Visa.pdf, accessed on 26 January 2012.

- or if there is a substantial age difference between the partners (Freie und Hansestadt Hamburg 2004).
- It may also be deemed suspicious if an application for asylum filed by the partner immigrating to the Federal Republic had been recently turned down,
- if the partner originates from certain developing or newly industrialised countries,
- if the couple got married in the country of origin,
- if the German spouse has a particularly low income,
- if the marriage was arranged by a special institute
- or if the partner originates from a country that has a particularly low recognition rate in asylum procedures (Weichert 1997: 1054f.).

Grounds for suspicion also exist if the couple has not made any plans as to which of them will make what contribution to sustain the marriage (Bremische Bürgerschaft 2011: 3). If any such grounds for suspicion exist, the foreigners authorities can interview the spouses, even separately, they may arrange to visit the couple at their home and may, if necessary, seek information from third parties. In some Federal Länder, in Bremen, for instance, the foreigners authorities are provided with detailed questionnaires which they can use when conducting interviews with individuals (Bremische Bürgerschaft 2011: 2). If the spouse or fiancé immigrating to the Federal Republic is not yet residing in the Federal Republic, as a rule an initial interview is conducted by the mission abroad responsible for issuing visas. Similar criteria apply here to the assessment whether a marriage of convenience exists or is intended (Bremische Bürgerschaft 2011: 2).
The subsequent immigration of dependents joining EU citizens is particularly challenging. It is known from the operational practice of foreigners authorities that owing to the preferential status accorded to family reunification under EU law, checks are frequently not carried out on couples suspected of entering into a marriage of convenience and foreigners authorities tend not to visit them at home or to interview them. However, some foreigners authorities pass the relevant information on to law enforcement authorities if they have concrete grounds to suspect marriages of convenience exist.

If the couple are not planning on getting married until they are in Germany, the registrar who is to conduct the marriage ceremony can interview both persons and can, if necessary, refuse to marry them even before the foreigners authorities have conducted their checks. (Econ Pöyry 2010: 76).

There are no official statistics available on the frequency of checks carried out into marriages of convenience owing to the different competencies and the different level of interview details. Within the framework of a study carried out as part of the *familles et couples binationaux en europe* project (Fabienne), in which 654 binational couples were interviewed in Germany, it became apparent that the frequency of checks carried out on couples suspected of entering into marriages of convenience has increased rapidly since the 1980s. Only 8 percent of binational couples who had got married before 1979 said they had undergone relevant checks whereas 28 percent of couples who got married in the 1980s, 38 percent of couples who got married in the 1990s and over 45 percent of couples who got married after 2000 said they had undergone relevant checks (Verband binationaler Familien und Partnerschaften 2001: 91). Even though it is not possible to draw any conclusions about the total number of binational couples in Germany owing to the limited representative nature of the study and the uncertainty what the respondents interpreted as checks aimed at detecting marriages of convenience, a trend has certainly emerged.

2.2.4 Proof and burden of proof

In terms of the burden of proof, a distinction needs to be made, in principle, between applications for a residence permit and criminal proceedings instituted for attempts made to obtain a residence permit under false pretences. In the first case scenario, the burden of proof lies with the spouse or life partner as soon as the foreigners authorities have doubts about whether the couple is or is planning to live together as life partners or as a married couple. In this case, the spouses have to dispel the doubts of the foreigners authorities. The burden of proof on the migrant subsequently immigrating is justified by the fact that marriage is one of the facts permitting them to enter the Federal Republic which means the burden of proof is on them (Jobs 2008).

There is no specific catalogue of criteria used by foreigners authorities that automatically leads residence permits being refused on the grounds of suspected misuse. Instead, all of the above-mentioned circumstances must be taken into account in individual cases where there are grounds to suspect misuse. Yet there are certain facts that are considered to be particularly strong indicators that a marriage of convenience exists, for instance, if the spouse subsequently immigrating is subject to a residence requirement owing to an asylum procedure pending but has not yet filed an application for permission to relocate to the spouse's or life partner's place of residence (Landtag von Baden-Württemberg 2011: 31). Covered by case law, the greater the gap is between normal marriages in which the spouses live in the same household as a family unit and support each other, the more obligations spouses have to meet in furnishing proof in practice (Franßende la Cerda 2010: 84). This means the burden of proof on applicants increases the more grounds for suspicion the foreigners authorities have.

If, by contrast, criminal investigations are launched, the foreigners authorities and investigating authorities must furnish proof that a marriage of convenience exists. If insufficient evidence is obtained meaning that the investigations are suspended, this "may strengthen the position of the foreigners authorities because unlike criminal proceedings, the spouses face the burden of information and the burden of proof in relation to their living together as man and wife. The foreigners authorities are not required to explain and prove that this is not the case" (Freie und Hansestadt Hamburg 2004: 4).

2.2.5 Competent authorities

Several bodies are responsible for the prevention of, investigation into and prosecution of marriages of convenience, all of which are at regional and local level with the exception of German missions abroad. In this regard, it cannot be assumed that there is a standard nationwide practice. Owing to the federal allocation of competencies, there is no central recording of statistics on suspicious cases or cases in which marriages of convenience have been proven. The two-stage monitoring procedure is based above all on the participation of a number of different actors. Which body is responsible for the first two levels of checks depends on whether the marriage was entered into before or after the couple entered the federal territory.

If the couple was not married when they immigrated to Germany but they are planning to get married in Germany, the registrars participate in the procedure aimed at preventing marriages of convenience. Since the law governing the right to marry was reformed in 1998, registrars have been obliged to refuse to participate in marriages that are obviously marriages of convenience. If registrars are unable to prevent the couple from getting married even though there are grounds to suspect a marriage of convenience exists, they are obliged in some Federal Länder to notify the foreigners authorities.

If the marriage was entered into before the subsequent immigration of the dependent, the registrars do not need to carry out the initial check which means that the respective mission abroad is responsible for conducting the initial interview with the spouse subsequently immigrating. If applicable, the mission abroad may ask the foreigners authorities for assistance within whose area of competence the foreigner is planning to immigrate. If the third-country national is already residing in the federal territory, there is no need for the mission abroad to carry out any checks. In some cases, however, the foreigner immigrating may be requested to reapply for a visa, may be asked to leave the country and to re-enter it.

The second, more comprehensive check is carried out by the foreigners authorities. The foreigners authorities play a key role in their capacity as the direct point of contact for all residence-related matters and as the authorities who implement the right of residence. If staff at the foreigners authorities are suspicious that an application for a residence permit for the purposes of family reunification is based on a marriage of convenience, they can request the applicant and the person they are joining to furnish proof in order to eliminate this suspicion. In addition, the foreigners authorities are responsible for notifying the law enforcement authorities of any such suspicious cases. Vice versa, the foreigners authorities are the point of contact for all other public authorities who have evidence suggesting a marriage of convenience exists (Econ Pöyry 2010: 73). In some Federal Länder, field staff of the municipal offices become involved. In individual cases, the services of private investigators have also been enlisted. However this practice has been suspended at least in Hamburg following a complaint filed by the competent Higher Administrative Court (Bürgerschaft der Freien und Hansestadt Hamburg 2007).

The police are not permitted to carry out investigations within the framework of police cooperation when residence permits are issued, but only in the course of criminal proceedings which presupposes that there are concrete grounds for suspicion. In this respect, it is the sole responsibility of the foreigners authorities, who are unable to initiate police investigations themselves, to carry out investigations that will decide whether to refuse or grant the residence permit (Weichert 1997: 1055). Criminal investigations can also be initiated ex-post after a residence permit has been issued (Freie und Hansestadt Hamburg 2004).

2.2.6 Sanctions, consequences and right of appeal for the parties concerned

Detections of marriages of convenience or the presumption that marriages of convenience exist can have consequences both in terms of the right of residence and under criminal law. If the spouse or life partner is unable to eliminate any serious suspicion the foreigners authorities may have, this generally leads to the loss or refusal of the residence permit for the foreign partner. In addition to having implications under the residence regulations, there may also be consequences under criminal law pursuant to Section 95 subsection 2, (2) of the Residence Act not just for the foreign spouse but also for persons facilitating the marriage since providing false information relating to the acquisition of a residence permit on behalf of a third party constitutes a criminal offence. The penalty is up to three years' imprisonment or a fine. In the police crime statistics, German nationals account for one-third of persons suspected of entering into a marriage of convenience (cf. Table 2). Foreigners helping to arrange a marriage of convenience may also face consequences under the Residence Act given that this represents a criminal offence. If foreigners residing in Germany are sentenced to imprisonment without probation for having accepted a sum of money to enter into a marriage of convenience, they generally lose their residence permit. In the majority of cases, the residence permits are not extended if the foreigner concerned was under suspicion of entering into a marriage of convenience even if there was not sufficient evidence to prove this. This may result in subsequent deportation.

In some cases, in addition to losing their residence permit, the foreigner may also receive a fine. In practice, prison sentences are the exception rather than the rule and are only handed down if the foreigner already has a criminal record or if the foreigner was entering into a marriage of convenience in conjunction with committing another criminal offence (Econ Pöyry 2010: 71).

Persons whose applications for a residence permit have been turned down because they are suspected of entering into a marriage of convenience can lodge an appeal and, if applicable, furnish the competent Administrative Court with proof that they are or are intending to live together as man and wife. If the criminal proceedings culminate in a sentence, the parties concerned can lodge an appeal against the decision with the Local Court. Appeals against an initial ruling handed down by a higher court can only be filed with the Federal Court of Justice.

2.2.7 Motives

There is no reliable information available that could be generalised about what motivates people to enter into a marriage of convenience, either for the applicant for family unification who is already residing in the Federal Republic or the foreigner subsequently immigrating. Financial motives of the applicant for family unification who is already residing in the Federal Republic are frequently given as an example in the political debate. By contrast, migration and humanitarian motives can be deduced from anonymous interviews conducted with spouses.[2] In these cases, opposition against Germany migration and refugee policy is combined with the firm belief that marriage of convenience is an effective tool for preventing expulsion and deportation of individuals (Hartmann 2008: 340).

2 MARRIAGE OF CONVENIENCE – Interview with a couple who entered into a so-called „marriage of convenience", online at: http://www.schutzehe.com/data/de_data/de_interview.htm, accessed on 26 January 2012.

2.3 Data and statistical information available

2.3.1 Sources of information and data available

The available data provide the possibility to draw conclusions on the scope of marriages of convenience only to a very limited extend. In principle, the available statistics reflect the different competencies of the law enforcement authorities and the foreigners authorities; accordingly they differ with regard to their ways of generating data. The Federal Criminal Police Office systematically records all suspected cases reported to the law enforcement authorities for the entire federal territory in the police crime statistics. As such, a distinction has been made since 2009 between cases in which it was presumed that a marriage of convenience was used as grounds for applying for a visa and those in which a marriage of convenience was used to apply for a residence permit or a settlement permit. Since 2002, the recording of criminal offences committed under the Residence Act in police crime statistics has been revised several times, inter alia, owing to the Amendment to the Immigration Act meaning that there are no statistics available on suspected cases for the years between 2005 and 2008. The data provided in the following does not provide any information about sentences, the loss of residence permits or actual cases of misuse. On the one hand, it is certain that not all cases of misuse are recorded in statistics. The statistics only reflect cases of misuse reported. On the other hand, it can be assumed that not all of the suspected cases recorded involve actual misuse. In addition, the data published by the Federal Criminal Police Office does not allow any conclusions whatsoever to be drawn about the nationality of the migrants under suspicion. By the same token, the distinction made between the residence permits of the suspects is insufficient. The data stored in the Central Register of Foreigners enables approximate conclusions to be drawn about residence permits issued on the basis of family relationships that have been revoked.[3] Here a distinction can be made between the Residence Act being used as the basis for residence permits issued which shows how often residence permits that were issued to the foreign spouses of German nationals and to foreigners residing lawfully in Germany have been revoked or have expired. However, this data does not allow any conclusions to be drawn regarding the reasons why these persons lost their residence permit and therefore does not provide any evidence of the actual existence of marriages of convenience. Residence permits can, for instance, also expire if the couple divorce within three years, if the spouse whom the foreigner has joined dies or if the period of validity expires.

Consequently, it is not possible to provide any reliable statistics on the number of marriages of convenience that have been entered into. No statistics are kept on the suspected cases reported to registry offices or on the number of marriages registrars refused to officiate at. The suspected cases recorded in police crime statistics are listed in Table 2, although the recording basis has been revised several times so that it is only possible to say a limited amount about the trends observed. A diachronous comparison can therefore only be drawn between 2002 and 2003 and between 2009 and 2010. The statistical exceptions particularly for 2004 seem to be attributable to changes in the recording method used.

3 The data in the Central Register of Foreigners is not accessible to the public at large.

Table 1: Suspected marriages of convenience

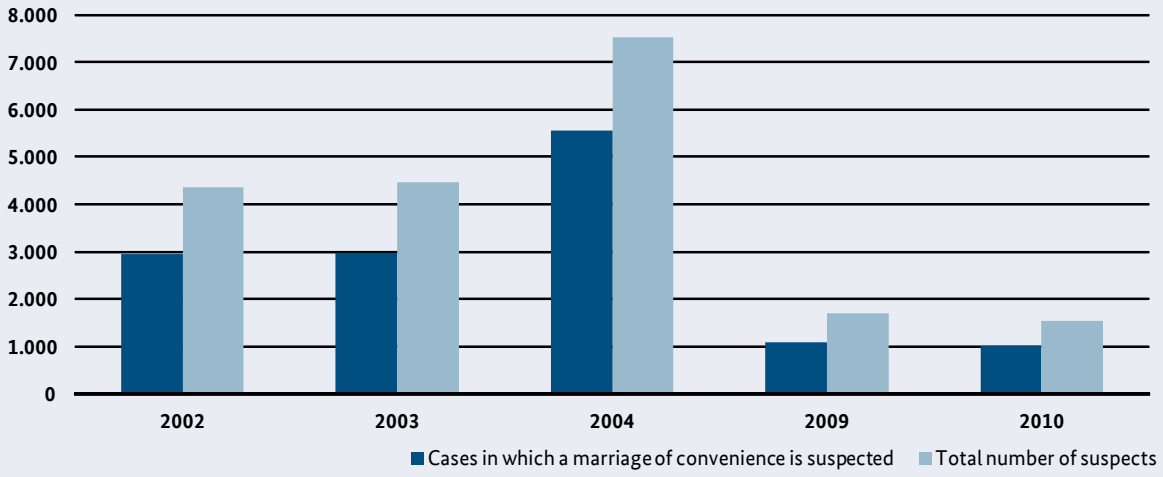
	2002	2003	2004	2009	2010
Suspected cases of marriages of convenience* (police crime statistics)	2,956	2,965	5,571	1,079	994
Of which:					
Cases in which a visa was obtained under false pretences through marriages of convenience (police crime statistics, code 725311)	--	--	--	537	463
Cases in which a residence permit or settlement permit was obtained under false pretences through marriages of convenience (police crime statistics, code 725321)	--	--	--	542	531
Number of persons suspected of entering into a marriage of convenience (police crime statistics)	4,360	4,458	7,527	1,692	1,535
Non-Germans suspected of entering into a marriage of convenience (police crime statistics)	2,771	2,839	5,259	1,062	965
Germans suspected of entering into a marriage of convenience (police crime statistics)	1,589	1,619	2,268	630	570
Non-Germans suspects residing lawfully (police crime statistics)	2,231	2,406	3,757	915	842
Suspects residing unlawfully (police crime statistics)	540	433	1,502	147	123
Marriages of convenience entered into in Germany (police crime statistics)	3,863	4,213	6,071	1,661	1,508
Marriages of convenience entered into in other countries (police crime statistics)	497	245	1,456	37	33
Visas issued to facilitate family reunification (visa statistics)	85,305	76,077	65,935	42,756	40,210
Residence permits issued to facilitate family reunification (Central Register of Foreigners)	--	--	--	33,735	37,896
Revocation of residence permits to foreign spouses pursuant to Section 28, subsection 1, (1) and Section 30 of the Residence Act ** (Central Register of Foreigners)	--	--	--	1,073	1,005
Share of suspected cases in which visas were granted to facilitate family reunification	3.5%	3.9%	8.5%	1.3%	1.2%
Number of suspected cases in which residence permits were issued to facilitate family reunification	--	--	--	1.6%	1.4%
Share of suspected cases in which the offence was committed in another country	11.4%	5.5%	19.3%	2.2%	2.2%
Share of suspects who have a legal residence permit	80.5%	84.8%	71.4%	86.2%	87.3%
Share of German suspects	36.4%	36.3%	30.1%	37.2%	37.1%
Share of offences committed in foreign countries in relation to visa applications filed	--	--	--	4.7%	5.9%

Source: official criminal statistics, Central Register of Foreigners and visa statistics of the Federal Foreign Office

* Up to 2004, this applied to criminal offence code 7253, from 2009 it has applied to the sum total of codes 725311 and 725321

** The statistics provided in this row originate from the Central Register of Foreigners and do not refer to the suspected cases recorded in police crime statistics. Residence permits were not necessarily revoked because a marriage of convenience existed but also for other reasons, for instance, because the couple divorced before the foreigners acquired an independent right of residence or the validity period expired.

Figure 1: Suspected cases of marriages of convenience 2002-2004, 2009-2010



Source: police crime statistics.

By contrast, there is no systematic information available on the ratio of suspected cases to residence permits refused. A survey carried out by the Federal Land of Brandenburg between 2002 and 2003 can be given as an example where in approx. every ten cases of all suspected cases registered by the foreigners authorities, the latter refused to issue a residence permit (cf. Table 3). Although this data originates from the time before the Residence Act entered into force, it does provide some indication about the share of residence permits refused in relation to the suspected cases registered by the foreigners authorities. However, this share does not allow any conclusions to be drawn about the suspected cases recorded in the police crime statistics as the criteria which the foreigners authorities rate as grounds for initial suspicion differ from those of the law enforcement authorities.

2.3.2 Socio-structural features

In the aggregate data of police crime statistics, a distinction is made between German and non-German suspects, gender and age, whether the place of commission of the offence was Germany or another country and between lawful and unlawful residence. Usually, the foreign suspects hold a legal residence permit. The statistics therefore suggest that family reunification is used above all by persons with a precarious residence permit as a means to legalise permanent residence. According to police crime statistics, in 90 percent of the cases in which persons endeavoured to obtain a residence permit or to obtain a visa by means of a marriage of convenience, Germany was place of commission of (cf. Table 1 and Figure 3).[4] Since the police crime statistics indicate that also the majority of visas obtained under false pretences, specifically through marriages of convenience, were obtained in Germany, these statistics seem to refute the general suspicion that the subsequent immigration of spouses is leveraged as a means of using a cover story to enter the country. In the vast majority of cases, the attempt seems to be made by foreigners who have already entered the country lawfully to obtain permanent residence status. By contrast, it is not possible to provide any statistics on the countries, in which marriages of convenience were entered into or applications for residence permits were filed.

Table 3 shows the nationality of the suspects.

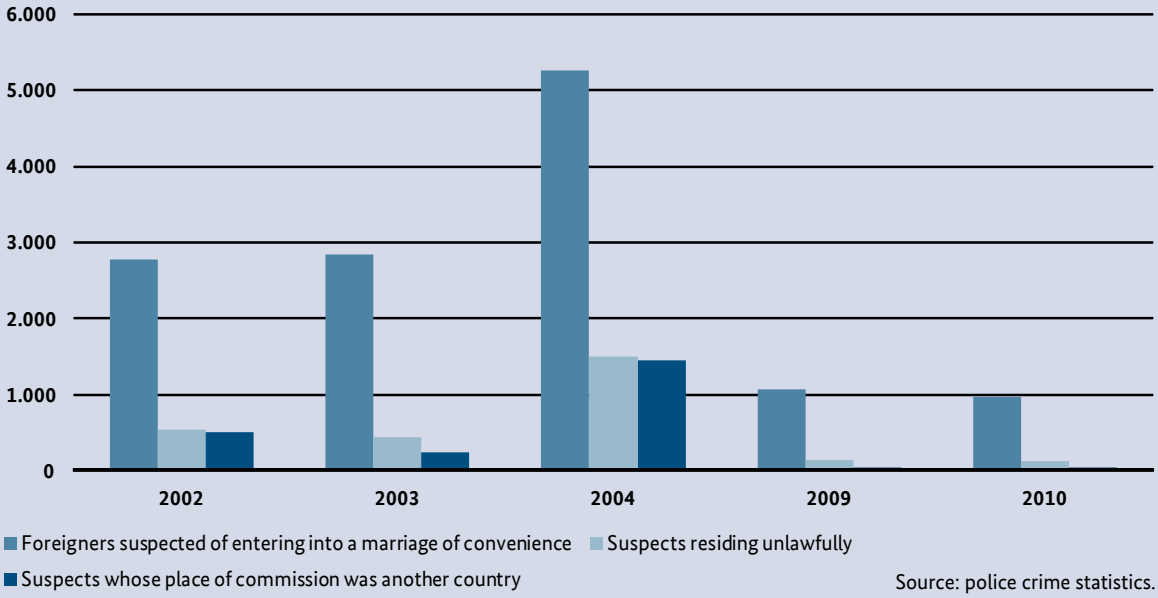
4 The statistics do not include visa applications rejected by German missions abroad.

Table 2: Residence permits refused in relation to suspected cases registered between January 2002 and January 2004

	Suspected cases based on applications filed for a residence permit	Refusal of the foreigners authorities to extend or issue a residence permit	Temporary residence permits issued by the foreigners authorities	Residence permits issued
Brandenburg	271	26	41	203

Source: Landtag Brandenburg (2004)

Figure 2: Non-German suspects of a marriage of convenience broken down by residence status and place of commission of the offence



Source: police crime statistics.

Table 3: Non-German suspects of a marriage of convenience broken down by the ten most frequent nationalities in 2010*

Nationality	2009	2010
Turkey	233	214
Vietnam	67	96
Serbia	64	40
Kosovo	29	38
Bosnia and Herzegovina	45	36
Russian Federation	44	29
India	51	28
Marocco	31	25
Croatia	27	24
Nigeria	27	23
Ukraine	21	22

* Cumulative figures for the criminal offence codes 725311 and 725321

Source: Federal Criminal Police Office

3 False declarations of parenthood

3.1 Legal basis and definitions

Parenthood has two meanings in German family law and in residence regulations. On the one hand, parenthood refers to the natural, biological father of a child, on the other hand it implies acceptance of responsibility for the child and is referred to in this context as a social and family relationship between the father and child (Article 1600 para. 2 of the German Civil Code; Federal Constitutional Court, 1 constitutional complaint 1493/96 of 9 April 2003, para. nos. 1 - 126). The crucial factor in legal terms is the formal acknowledgement of parenthood rather than who the actual biological father is. Parenthood is deemed to be acknowledged as soon as the mother agrees to the declaration of paternity issued by the father.

However, the parenthood of a child can only be recognized once, in the case of so-called patchwork families either by the biological father or the mother's partner who is living with her in a social and family relationship if he is involved in raising the child. This means that regardless of who the biological father is, the fact that the father and child are living in the same household even temporarily or the payment of maintenance for the child can be considered to be the basis of parenthood (Deutscher Bundestag 2006: 12 et seq.).

In addition, the biological father is also considered to be a family member within the meaning of the Residence Act even though he is not the father in legal terms because another man has acknowledged paternity (Eberle 2008a: 12).

Generally speaking, it is only members of the core family that are deemed to have the right to family reunification. This means the right to family reunification is restricted to underage children and the spouses of Germans and foreigners living in Germany (Kreienbrink et al. 2007: 12, as well as Sections 28, 29, 30 of the Residence Act).

Similar to the immigration of spouses, the subsequent immigration of foreign parents of minor Germans or of minor foreigners living in Germany is derived from the constitutional protection of the family under Article 6 para. 1 of the Basic Law:

- A residence permit shall be issued to the parents of a minor foreigner who holds a residence permit if no parent entitled to legal custody is resident in the Federal territory (Section 36 of the Residence Act).

- The residence permit shall be granted to the foreign parent of a minor, unmarried German „for the purpose of care and custody if the German's ordinary residence is in the federal territory" (Section 28 subsection 1 of the Residence Act).

Section 28 of the Residence Act regulates the subsequent immigration of dependents to join a German national and therefore determines the subsequent immigration of parents of a minor, unmarried German for the purpose of care and custody as well as that of foreign spouses joining their German partners.

In cases in which a third-county national is the parent of a German child, the German Residence Act makes a distinction between whether or not the third-county national is a person entitled to care and custody. If the foreigner is a person entitled to care and custody, he/she is legally entitled to be granted a residence permit; if the foreigner is not a person entitled to care and custody, it is at the discretion of the foreigners authorities whether or not to grant a residence permit (Section 28 subsection 1, fourth sentence of the Residence Act, see also Oberhäuser 2011: 224).

In principle, the subsequent immigration of dependents to join EU nationals is regulated by Sections 3 and

4 of the Freedom of Movement Act/EU and applies accordingly to the parents of EU nationals who are not nationals of an EU Member State. Notwithstanding this, Section 4 of the Freedom of Movement Act/EU stipulates that non-gainfully employed EU citizens and their dependents shall only have the right to enter and reside in the Federal territory to join a non-gainfully employed person who is entitled to freedom of movement if the latter can guarantee adequate means of subsistence for them. Irrespective of this, parents of children with EU citizenship who are entitled to care and custody are granted a residence permit by virtue of EU regulations (Harms 2008: para. 7).

As in the case of marriages of convenience, there is no explicit definition of false declarations of parenthood in German residence regulations. Even though the principle applies here that „family reunification [...] shall not be permitted [...] if it is established that the marriage has been entered into or kinship established solely for the purpose of enabling the subsequently immigrating persons to enter and stay in the Federal territory" (Section 27, subsection 1a (1) of the Residence Act), recognized parenthood substantiates the right to family reunification.

There are two different case scenarios involving false declarations of parenthood:

- A German man acknowledges paternity for a child of a foreign, unmarried mother: pursuant to Section 4 of the Nationality Act (Staatsangehörigkeitsgesetz), the child thereby acquires German nationality and pursuant to Section 28 subsection 1 (3) of the Residence Act (Subsequent immigration of dependents to join a German national), the mother of the child is entitled initially to a temporary residence permit and, if applicable, in due course to a settlement permit.

- A foreign man who does not have a secure right of permanent residence acknowledges paternity for the child of a German or non-German mother: if the child has German nationality and the parents have joint custody within the framework of a custody declaration, the father is entitled to a residence permit.

By way of derogation from Section 5 subsection 1 (1) of the Residence Act, it is not necessary to ensure that the foreign parent's livelihood is secure in the above-mentioned case scenarios. This explains why persons acknowledging paternity do not need to fear being obliged to pay maintenance if they are destitute.

Since 2008, public bodies have been entitled to contest any such acknowledgement of paternity in the courts pursuant to Section 1600 subsection 1, (5) and subsection 3 of the German Civil Code. However, this presupposes that there is no social or family relationship between the father and the child and that the paternity was acknowledged solely for the purposes of family reunification. This means it is possible to say that the formal prerequisites for family reunification have not been met in cases involving false declarations of parenthood.

With Section 90 subsection 5 of the Residence Act, the foreigners authorities are obliged to take action and to notify the authority entitled to contest the paternity if they become aware of false declarations of parenthood. Other public bodies are obliged to notify the competent foreigners authorities forthwith if they become aware of false declarations of parenthood (Section 87 subsection 2 first sentence (4) of the Residence Act).

3.2 Policy to control and prevent misuse

3.2.1 Political development

Contrary to the misuse of subsequent immigration of spouses, false declarations of parenthood only became the focus of discussions at the Standing Conference of the Interior Ministers of the Länder in the Federal Republic of Germany in 2003. This was preceded by sporadic press coverage in which false declarations of parenthood were referred to as a loophole in the regulations governing family reunification (Focus Magazin 04.03.2002). At the initiative of the Standing Conference of the Interior Minister of the Länder in the Federal Republic of Germany, the Ministries of Home Affairs of the Federal Länder conducted a survey between 2003 and 2004 on acknowledgement of paternity, the granting of first residence permits and on the suspension of residence-terminating measures. Furthermore, according to some Ministries of Home Affairs the nature of trafficking had changed. Instead of clandestine crossing of the border, it is argued that there had been an increase in trafficking of persons

"using a cover story" with the help of residence permits and visas in relation to marriages of convenience and false declarations of parenthood (Bayerischer Landtag 2006: 2).

In response to these observations, a decision was taken to reform the paternity law which entered into force in 2008, incorporating the right of public authorities to contest the paternity into Section 1600 of the German Civil Code. This amendment to the law put an end to the public discussion. The concrete implementation of the right to contest paternity and the checks carried out on binational parents based on this right have only been discussed in the Parliaments (Deutscher Bundestag 2010).

However, the issue continues to feature at administrative level as the foreigners authorities did not consider the legal amendments to be particularly effective and contestation of paternity before the courts rarely leads to the loss of paternity. Although the foreigners authorities in Berlin, for instance, received 360 reports of false declarations of parenthood, proceedings to contest the paternity were only instituted in 148 cases. These proceedings were only successful in two cases, i.e. less than 1 percent of suspected cases; similar results are known from the operational practice of foreigners authorities in Munich and Hamburg.

3.2.2 Measures aimed at preventing misuse

The right of public authorities to contest the paternity of persons seeking to obtain a residence permit is the most important tool for preventing false declarations of parenthood. After establishing grounds for initial suspicion, the competent authorities have twelve months in which to contest the paternity, yet they must do so within five years after paternity has been acknowledged at the very latest (Müller 2011: 145). Before the paternity law was amended in 2008, public authorities had no legal means of contesting declarations of paternity that had been issued for the purposes of obtaining a residence permit (Göbel-Zimmermann 2006; Deutscher Bundestag 2005). Since the new paternity law entered into force, public authorities can endeavour to prove that there is no actual paternity, i.e. there is no social or family relationship between the father and the child. In individual cases, it is known that foreigners authorities make the issuance of a residence permit contingent on the father being awarded custody of the child (Niedersächsischer Landtag 2011a: 13446). In this respect, in practice, the acknowledgement of paternity does not automatically lead to the granting of a residence permit.

The right of public authorities to contest paternity has ceased to apply at least in Hamburg since April 2010 as the Hamburg Administrative Court filed a complaint with the Federal Constitutional Court on the constitutionality of this right (Hamburg-Altona Administrative Court, ruling of 15 April 2010 - 350 F 118/09; NJW 2010, 2160). Some foreigners authorities check themselves whether there is a relationship of shared responsibility between father and child, in these cases occasional contact between the father and child is not deemed sufficient grounds to substantiate a right of residence (Niedersächsischer Landtag 2011a: 13446). In cases in which the German mother "does not show any explicit interest in the father having visitation rights with her child", it also happens in practice that the foreigners authority refuses the temporary suspension of deportation (Niedersächsischer Landtag 2011b: 4).

3.2.3 Measures to uncover cases of misuse

There are no similar requirements comparable to the procedures used to discoverer marriages of convenience as to when grounds for initial suspicion of false declarations of parenthood exist. It is known from the operational practice of foreigners authorities that it is rated as grounds for initial suspicion in individual cities if the father acknowledging paternity is already married to another woman and has children but still acknowledges paternity for the child of a mother who does not hold a residence permit. In addition, it is not possible to make any general or exemplary statements on what the foreigners authorities rate as grounds for initial suspicion of false declarations of parenthood. However, if a false declaration of parenthood is already suspected, the foreigners authorities

in Berlin have asked the father in individual cases to undergo a "voluntary" genetic test to prove he is the child's biological father (Deutscher Bundestag 2010). However it is not known to what extent this practice is still being implemented following a decision handed down by the Federal Constitutional Court which called into question the lawfulness of tests to prove a man is the child's biological father at the request of public authorities (Federal Constitutional Court, 1 constitutional complaint 2509/10 of 7 October 2010, para. nos. 1 – 19; Federal Constitutional Court, 1 constitutional complaint 440/11 of 28 February 2011, para. nos. 1 - 24). It is not known either what impact this will have on the practice of the foreigners authorities in Munich who demand that irregular migrants seeking to obtain a residence permit on the grounds of parenthood take a test to prove they are the child's biological father as a "trust-building measure" (Schneider 2012: 52).

3.2.4 Proof and burden of proof

The public authorities contesting the paternity have to prove that there is no social or family relationship between the child and the man who has acknowledged paternity. Sometimes a paternity test is used to prove who the biological father is in order to verify a false declaration of paternity exists although case law of the Federal Constitutional Court says the authorities contesting the paternity are not entitled to request anyone to take this test (Müller 2011). This has created an ambiguous situation: since the burden of proof of parenthood lies with the migrant who is seeking to obtain a residence permit on the grounds of his parenthood, the foreigners authorities can suggest the migrant to submit the results of a voluntary DNA test to establish who the biological father is (Franßen-de la Cerda 2010: 82). Although the paternity law that was amended in 2008 prohibits public authorities from urging men to take a test to prove they are the biological father of a child, the foreigners authorities are invoking the special burden of proof on migrants to prove all circumstances that may help them to obtain a residence permit. DNA tests themselves are, however, controversial and are being not used in a standardised way. The practice which some foreigners authorities in Bavaria have engaged in of asking people to undergo DNA tests if they do not have documents to prove that family relationships exist has been called into question by the Bavarian Ministry for Home Affairs.
In the General Administrative Regulations relating to the Foreigners Act of the Federal Government, biological paternity tests are only considered to be an option for third-country nationals who can undergo them voluntarily to prove they are the biological father in order to eliminate suspicion of misuse (General Administrative Regulations relating to the Foreigners, AVwV AufenthG, Act 27.0.5). However, the potential impact this practice might have on family life was not taken into account, particularly on cases in which the father who is in a social and family relationship with the child is not the biological father.

Occasionally, the foreigners authorities simply decide in these situations not to contest the paternity. Instead, they check whether the actual paternity meets the criteria for family reunification. However, conversely the conclusion can be drawn that in the everyday practice of public authorities, acknowledgements of paternity do no automatically lead to a right of residence. In practical terms, this can mean that the burden of proof of actual parenthood is on the third-country national who does not have a residence permit. Based on this, neither proof of occasional visits nor the intention to participate in raising the child – in the case of parents who are living separately – are deemed to be sufficient grounds for granting a residence permit for the purposes of family reunification (Franßen-de la Cerda 2010: 84).

However, there is no standardised case law on this issue yet.

3.2.5 Competent authorities

Pursuant to Section 1600 subsection 5 of the German Civil Code, the following authorities in the individual Federal Länder are entitled to contest paternity:

Table 4: Public authorities entitled to contest false declarations of parenthood

State (Land)	Public authorities entitled to contest paternity
Baden-Württemberg	Regional Commissioner's Office Freiburg
Bavaria	Government of Central Franconia
Berlin	Districts
Brandenburg	Counties and towns not belonging to a county
Bremen	Municipality of Bremen/Bremerhaven Municipal Committee
Hamburg	Department of Interior Affairs
Mecklenburg-Western Pomerania	Land Office for Internal Administration
Lower Saxony	Counties and towns not belonging to a county
North Rhine-Westphalia	District Governments of Cologne and Arnsberg
Rhineland-Palatinate	Supervisory and Services Directorate
Saarland	Land Administration Office
Saxony	Land Directorate
Saxony-Anhalt	Land Administration Office
Schleswig-Holstein	County district commissioners/mayors of towns not belonging to a county
Thuringia	Land Administration Office

Source: Deutscher Bundestag (2010).

Both the missions abroad responsible for issuing residence permits and the competent foreigners authorities are obliged to notify these authorities as well as the registry offices responsible for entries into the Vital Register of cases in which false declarations of parenthood are suspected. In addition, the foreigners authorities conduct checks themselves in individual cases to establish whether there is a social and family relationship between the father and child and whether the respective parenthood meets the requirements under the Residence Act (Müller 2011; Niedersächsischer Landtag 2011b). Furthermore, the registrars in some Federal Länder refuse to certify the parenthood if there are any grounds to suspect false declarations of parenthood. However, there is no information available on the grounds for any such refusal (Deutscher Bundestag 2010: 6 et seq.). It is particularly difficult to contest false declarations of parenthood when youth welfare services are involved in the proceedings. By contrast, no nationwide statistics are recorded of all cases involving grounds for suspicion.

3.2.6 Sanctions and consequences for the parties concerned

If the paternity has been successfully contested, this can, if the father of the child is German, lead to the child losing its German citizenship and subsequently to the child's mother losing her residence permit. In legal practice, however, German citizenship is only revoked of children up to a certain stage of development, although there are no specific age limits (Müller 2011: 146). As the courts have meanwhile called the constitutionality of the loss of citizenship into question, relevant proceedings have been suspended, at least in Hamburg, until the matter is clarified by the Federal Constitutional Court (cf. 3.2.2). In this respect, the presumption of false declarations of parenthood at present is not resulting in the loss of citizenship (Hamburg-Altona Administrative Court, ruling of 15 April 2010 - 350 F 118/09; NJW 2010, page 2160). False declarations of parenthood may also be subject to criminal prosecution, at least in theory, pursuant to Section 95 subsection 2, (2) of the Residence Act. However, it is not known whether and how often preliminary investigations are initiated in practice. As actions to contest paternity before the courts are rarely successful (cf. 3.2.1), it is also doubtful whether the penalties are having any serious impact.

Just like persons suspected of entering into a marriage of convenience, persons involved in contestations of paternity also have recourse to the courts.

3.3 Data and statistical information available

3.3.1 Sources of information and data available

In police crime statistics, suspected cases of attempts to obtain a residence permit under false pretences using false declarations of parenthood are not shown separately. If they are shown at all, then they are covered by the residual category "Attempts to obtain a residence permit under false pretences [...] using other modi operandi". It is true that it is recorded within the framework of the Central Register of Foreigners whether a residence permit has been derived from the parenthood of a German child. Yet even here, the loss of a residence permit does not allow any conclusions to be drawn whether public authorities successfully contested paternity or it was lost for any other reasons, for instance, because the child has meanwhile reached the age of 18.

3.3.2 Amount of information available on the scope of misuse

No data has been systematically collected on the frequency of false declarations of parenthood. To assess the overall picture, it is necessary to use indicators. According to a report published by the Standing Conference of the Interior Ministers of the Länder in the Federal Republic of Germany in 2004, the number of residence permits granted on the basis of declarations of paternity between 1 April 2003 and 31 March 2004 can be broken down as follows: in 2,338 cases, an unmarried, foreign mother was granted a residence permit. Out of these women, 1,694 women were obliged to leave the Federal Republic once the paternity had been acknowledged. In 1,449 of these cases, paternity was acknowledged by a German national, whereas in 331 cases, German nationality was granted to children born in Germany (Section 4 subsection 4 of the Nationality Act). In these cases, the paternity was acknowledged by a foreigner with a permanent residence permit. In the reverse case in which the paternity of a child with German nationality was acknowledged or a residence permit was granted to a foreign man who did not hold a residence permit, a total of 1,935 cases were detected, with a residence permit being granted or the deportation of the father being suspended in 1,414 cases (Göbel-Zimmermann 2006).

According to information provided by the Federal Government, the number of proceedings to contest the paternity instituted by public authorities between June 2008 and February 2010 were as follows:

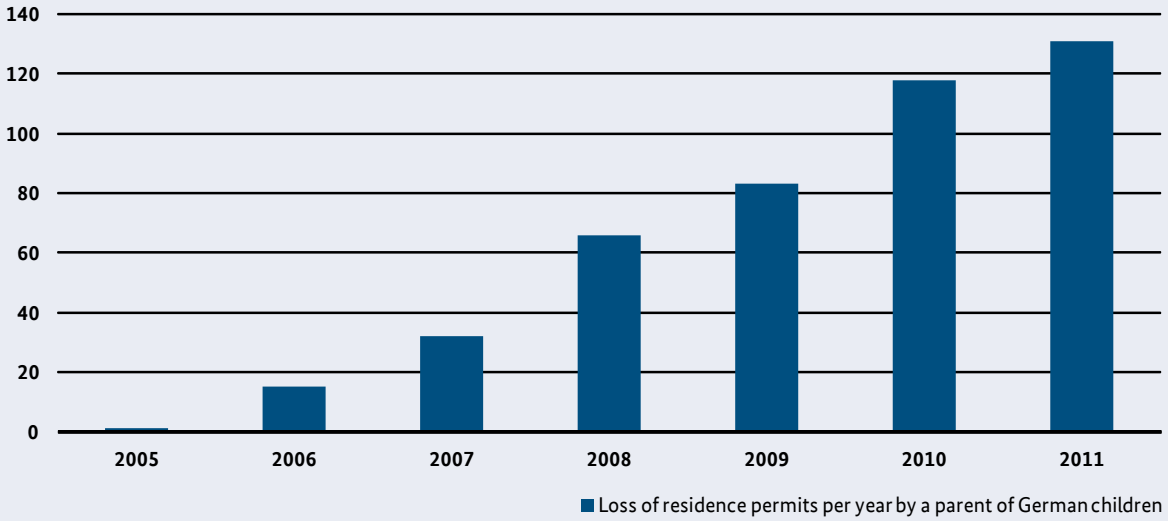
Table 5: Cases in which paternity was contested between June 2008 and February 2010

State (Land)	Proceedings pending and proceedings con-cluded	Proceedings examined, paternity not contested	Legal action pending and legal action concluded
Baden-Württemberg	112	19	16
Bavaria	29	12	7
Berlin	N/A	N/A	N/A
Brandenburg	107	33	50
Bremen	N/A	N/A	N/A
Hamburg	242	70	21
Mecklenburg-Western Pomerania	70	32	41
Lower Saxony*	58	70	33
North Rhine-Palatinate	166	49	24
Rhineland-Palatinate	49	12	7
Saarland	N/A	N/A	N/A
Saxony	32	14	8
Saxony-Anhalt	40	2	9
Schleswig-Holstein	10	3	5
Thuringia	8	2	6
Territory of the Federal Republic as a whole	923	318	227

* Incomplete data.

Source: Deutscher Bundestag (2010)

Figure 3: Loss of residence permits by a parent of German children per year in absolute numbers



Source: Central Register of Foreigners

However, these statistics need to be interpreted with caution as they do not provide any indication of the success of actions for rescission. If these figures are placed in relation to the data contained in the Central Register of Foreigners, it becomes apparent that since the right to contest paternity was created in 2008, the residence permits of the foreign parents of German children were revoked in a total of 398 cases.

The loss of residence permits granted to the foreign parents of German children pursuant to Section 28 subsection 1 (3) has been illustrated in Figure 3. Residence permits have been granted to the foreign parents of German children since the Immigration Act entered into force in 2005. Since then, there has been a *steady* increase in the number of residence permits revoked and expired. As Figure 3 shows, *there is no change in the rise of the curve even since the right to contest paternity was created in 2008.* Although it cannot be deduced from the data what the annual increase is attributable to, the increase has remained steady since 2008. It is therefore presumed that the right to contest paternity *has only had* minimum impact on the revocation of residence permits for foreign parents. If this were not the case, there would have been a sharp rise in the curve since 2008. Since this is not the case, it is logical to draw the conclusion that the expiry of residence permits after 2008 cannot generally be attributed to contestations of paternity.

4 Conclusions and outlook

Marriages of convenience:
It is the registry offices that implement measures aimed at preventing marriages of convenience on the one hand and the missions abroad that carry out initial checks before the foreigners enter the federal territory. On the other hand, more comprehensive checks are carried out by the local foreigners authorities as part of the application process for a residence permit. The monitoring practice itself varies from municipality to municipality and from Federal Land to Federal Land. In addition, criminal investigations can be launched if there are concrete grounds for suspicion. As the police crime statistics only cover the suspected cases registered by the law enforcement authorities, it is not possible to provide any information about the number of marriages of convenience that exist. The number of suspected cases recorded in police crime statistics indicates that marriage of convenience is only used as a means of gaining unlawful entry in very few cases. Instead, marriages of convenience are generally used as a means of consolidating precarious yet lawful residence. Owing to the lack of information available, it is not possible to comment on the effectiveness of the existing control and prevention tools or on potential loopholes in the law.

False declarations of parenthood:
The recently established right of public authorities to contest paternity is a central tool for preventing false declarations of parenthood from being misused to facilitate family reunification. Although there are no comprehensive figures available about the number of cases in which paternity has been contested and the number of cases in which it has been successfully contested, the cases that have come to light in operational practice show that any such contestation of paternity is rarely successful. However, knowing that intensive interviews are conducted with the persons concerned, it is assumed that this could have a deterrent effect. Yet the fact that there are few statistics available neither proves any such deterrent effect nor proves that the right to contest paternity is not effective.

Bibliography

Albrecht, Rainer (2008): § 82 AufenthG, in: Storr, Christian; Wenger, Frank; Eberle, Simone (Hg.): Kommentar zum Zuwanderungsrecht. Aufenthaltsgesetz und Freizügigkeitsgesetz/EU, Stuttgart: Borberg, pp. 598–608.

Bayerischer Landtag (2006): Antwort des Staatsministeriums des Innern auf die Schriftliche Anfrage der Abgeordneten Gudrun Peters SPD, Umsetzung des Schengener Abkommens 2007. 15. Wahlperiode, Drucksache 15/5308, 30.5.2006.

Bremische Bürgerschaft (2011): Kleine Anfrage der Fraktion Bündnis 90/Die Grünen vom 13.4.2011. Praxis der Scheineheermittlung. Antwort des Senats vom 31.5.2011. 17. Wahlperiode, Drucksache 17/1784.

Bürgerschaft der Freien und Hansestadt Hamburg (2007): Schriftliche Kleine Anfrage der Abgeordneten Antje Möller (GAL) und Antwort des Senats. Betr.: Illegale Observation im Auftrag der Ausländerbehörde. 18. Wahlperiode, Drs. 18/6177, 4.5.2007.

Deutscher Bundestag (2005): Stenographischer Bericht 153. Sitzung. 15. Wahlperiode, Plenarprotokoll 15/153, 26.01.2005.

Deutscher Bundestag (2006): Antwort des Staatssekretärs Dr. August Hanning vom 8.9.2006 auf die Anfrage der Abgeordneten Ulla Jelpke (DIE LINKE). 16. Wahlperiode, Drucksache 16/2585, 15.09.2006.

Deutscher Bundestag (2010): Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Sevim Dağdelen, Ulla Jelpke, Wolfgang Neskovic, weiterer Abgeordneter und der Fraktion DIE LINKE – Drucksache 17/897. Vorwürfe gegen Ausländerbehörden wegen Gentests bei binationalen Eltern. 17. Wahlperiode, Drucksache 17/1096, 18.3.2010.

Eberle, Simone (2008a): § 27 AufenthG, in: Storr, Christian; Wenger, Frank; Eberle, Simone (Hg.): Kommentar zum Zuwanderungsrecht. Aufenthaltsgesetz und Freizügigkeitsgesetz/EU, Stuttgart: Borberg, pp. 234–243.

Eberle, Simone (2008b): § 95 AufenthG, in: Storr, Christian; Wenger, Frank; Eberle, Simone (Hg.): Kommentar zum Zuwanderungsrecht. Aufenthaltsgesetz und Freizügigkeitsgesetz/EU, Stuttgart: Borberg, pp. 669–681.

Econ Pöyry (2010): Marriages of Convenience: A Comparative Study. Rules and Practices in Norway, Sweden, Germany, Denmark, and the Netherlands. Commissioned by the Norwegian Directorate of immigration (UDI), Oslo: Econ Pöyry.

Focus Magazin (04.03.2002): Bleiberecht: Legaler Trick, in: Focus Magazin, vom 04.03.2002(10), pp. 28.

Franßen-de la Cerda, Boris (2010): Die Verpflichtung des Ausländers zur Mitwirkung, in: Zeitschrift für Ausländerrecht und Ausländerpolitik, 30(3), pp. 81–90.

Freie und Hansestadt Hamburg (2004): Weisung (für die Bezirksämter nach § 5 Abs. 4 S. 1 Nr. 2, S. 2 Bezirksverwaltungsgesetz) zur Verfahrensweise bei Verdacht auf Scheinehe. Weisung Nr. 4/2005, 29.12.2004.

Göbel-Zimmermann, Ralph (2006): ‚Scheinehen', ‚Scheinlebenspartnerschaften' und ‚Scheinväter' im Spannungsfeld von Verfassungs-, Zivil- und Migrationsrecht, in: Zeitschrift für Ausländerrecht und Ausländerpolitik, 26, pp. 81–91.

Harms, Karsten (2008): § 3 FreizügG/EU, in: Storr, Christian; Wenger, Frank; Eberle, Simone (Hg.): Kommentar zum Zuwanderungsrecht. Aufenthaltsgesetz und Freizügigkeitsgesetz/EU, Stuttgart: Borberg, pp. 831–948.

Hartmann, Kathi-Alexandra (2008): Scheinehen mit deutschen Staatsangehörigen: Struktur, Politik, (deutsch-) deutsches Ehebild, Berlin: wvb.

Jobs, Thorsten (2008): Beweismaß und Beweislast beim Ehegattennachzug, in: Zeitschrift für Ausländerrecht und Ausländerpolitik, 28(9), pp. 295–299.

Kreienbrink, Axel/Rühl, Stefan (2007): Familiennachzug in Deutschland. Kleinstudie IV im Rahmen des Europäischen Migrationsnetzwerks, Nürnberg: Bundesamt für Migration und Flüchtlinge.

Landtag Brandenburg (2004): Antwort der Landesregierung auf die Kleine Anfrage Nr. 2612 des Abgeordneten Sven Petke, Fraktion der CDU. Drucksache 3/7045, 16.2.2004.

Landtag von Baden-Württemberg (2011): Beschlussempfehlungen und Berichte des Petitionsausschusses zu verschiedenen Eingaben, 16. Petition 14/5531 betr. Aufenthaltstitel. 15. Wahlperiode, Drucksache 15/590, 13.10.2011.

Müller, Kerstin (2011): Anerkennung und Anfechtung der Vaterschaft, in: Asylmagazin(5), pp. 143–146.

Niedersächsischer Landtag (2011a): Antwort des Ministeriums für Inneres und Sport auf die Frage 32 der Abg. Kreszentia Flauger und Pia-Beate Zimmermann (LINKE): Trieben die Behörden den Flüchtling Shambu Lama in den Tod? 16. Wahlperiode, 104. Plenarsitzung vom 14.4.2011.

Niedersächsischer Landtag (2011b): Kleine Anfrage mit Antwort. 16. Wahlperiode, Drucksache 16/3820, 01.07.2011.

Oberhäuser, Thomas (2011): Der unionsrechtliche, aber nicht geregelte Anspruch auf Familiennachzug, in: Asylmagazin(7-8), pp. 223–227.

Schneider, Jan (2012): Maßnahmen zur Verhinderung und Reduzierung irregulärer Migration. Studie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN). Im Erscheinen, Nürnberg: Bundesamt für Migration und Flüchtlinge.

Verband binationaler Familien und Partnerschaften (2001): Fabienne. Binationale Familien und Lebenspartnerschaften in Europa. Abschlussbericht, Frankfurt/Main.

Weichert, Thilo (1997): Die ausländerrechtliche Ermittlung von Scheinehen. Neue Zeitschrift für Verwaltungsrecht, 16(11), pp. 1053–1057.

Welt online (29.06.2010): „Obama von Altona" Bülent Ciftlik verurteilt. Online: http://www.welt.de/politik/deutschland/article8218332/Obama-von-Altona-Buelent-Ciftlik-verurteilt.html.

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