

Misuse of the Right to Family Reunification in Poland

Marriages of Convenience and False Declaration of Parenthood

*Prepared by the National Contact Point
to the European Migration Network
in Poland*



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This National Report was prepared by the Ministry of Interior acting as the coordinator of the National Contact Point to the European Migration Network in Poland (PL NCP EMN). This Report follows the common specifications and methodology adopted by the European Migration Network (EMN).

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Preface

This Report constitutes a compilation of replies to the questions specified in the EMN Questionnaire, which have been provided - on the request of the Migration Policy Department (Ministry of Interior) - by the staff of respective units at the Voivodeship Offices as well as the Office for Foreigners in Poland. The study entitled “The institution of marriage as a means of legalising foreigners’ stay on the EU/Schengen territory” prepared within the Border Guard Headquarters Analysis Unit II, has also been used in this Report.

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Summary of national information obtained (PL NCP EMN)

Marriage has been defined in the Constitution of the Republic of Poland as a union of a man and a woman and its conclusion was regulated in relevant acts. The Polish law also specified the issues relating to family relationships, including maternity and paternity.

The Polish authorities noted the fact that foreigners abuse the argument of family relationships in order to legalise their stay in Poland, but despite the increasing number of identified abuses, the scale of the problem remains rather small and does not require far-reaching amendments to the national law. Taking into account the specific nature of family relationships and the right to privacy of each human being, Poland, as other EU Member States, tries to maintain the balance between the respect for family integrity (i.a. by implementing the EU regulations on family reunion) and the respect for the law and the protection of state interests (i.a. by measures aimed at identifying and counteracting undesirable phenomena, including also the cases where family relationships presented as the reason justifying the right of foreigners to stay on the territory of Poland are used by the foreigners to circumvent the law).

The national legislation on foreigners is influenced not only by the relevant European Union acquis, but the introduced or considered amendments to regulations also result from the experiences of state authorities and institutions which confront the existing law with practical problems and the ingenuity of persons obtaining various benefits by abusing the instruments, which were created for the benefit of Polish nationals and nationals of other countries.

Such a delicate matter as family relationships requires compiling “good practices”, already used in specific cases of doubtful marriages or parenthood, which could help other public officials and officers in the identification of abuses. It is very often the case that the consequences of the identification of a marriage of convenience or false acknowledgment of paternity during the administrative proceedings are not sufficiently severe for perpetrators to deter or discourage their potential followers.

The problem of marriages of convenience is very seldom presented in the media. During the collection of materials to the present report, it was established that the problem of false declarations of paternity is virtually unknown to the general public. This partly explains the involvement of Polish nationals in such practices, since they very often do not fully realise the consequences (in particular long-term consequences) of their actions and are motivated mainly by the material gains for the “favour” done.

Due to the fact that Poland belongs to the European Union and to the Schengen area, the documents issued by the Polish authorities to foreigners, which enable them

to stay (and work) on the territory of Poland and move freely outside its borders, are attractive. Therefore, efficient cooperation at the national level and the international cooperation between authorities/institutions dealing with the phenomena discussed in this report are of utmost importance.

It is extremely difficult to precisely determine the scale of unlawful use of family ties as the grounds for legalisation of stay of foreigners in Poland, since data on marriages of convenience and false declarations of paternity are only fragmentary and collected by individual state authorities solely for the purposes of their proceedings.

2.1. Concept of ‘marriage’ and ‘family’ in the context of family reunion and especially in the context of marriages of convenience and false declaration of paternity

The concept of marriage

Pursuant to the provisions of the Act of 2 April 1997 – The Constitution of the Republic of Poland (Journal of Laws, 1997, No 78, item 483, as amended) – marriage is a union of a man and a woman. A marriage is concluded when a man and a woman are both present before the head of registry office and make a statement that they take each other in marital union. A marriage is also concluded when a man and a woman enter into marital union under canon law or the law of other religious order, by stating their mutual intention to enter into marriage under Polish law in the presence of a cleric, and the head of register office draws up a marriage certificate (Article 1(2) and (3) of the Act of 25 February 1964 of The Family and Guardianship Code – Journal of Laws No. 9 item 59, as amended).

The definition of cohabitation does not exist in the Polish law. Cohabitation has been defined in case law of the courts, *inter alia* by the Supreme Court in the judgement of 31 March 1988, as lifelong union analogous to marriage but differing from the latter in that it's not legally binding. It means the existence of home characterised by spiritual, physical and economic bond connecting a man and a woman. As emphasized, in principle a cohabitation is only a *de facto* situation. According to that definition a cohabitation does not cover same-sex unions, which are most commonly referred to as ‘civil partnerships’. However, it is worth stressing that case law sometimes is using the word “cohabitation” to describe same-sex unions (the so-called homosexual cohabitation, according to the ruling of the Appeal Court in Białystok of 23.02.2007 a cohabitation means stable, *de facto* joint property ownership by two people regardless of their sex) in the context of cases related to, for example, inheritance proceedings, division of property etc. However, regardless of the jurisprudence in this regard, in Poland it is established that cohabitation is an opposite-sex union. Legal regulations on common rights and obligations typically associated with marriage do not apply to non-marital cohabitation.

Concept of family in the context of family reunion

The concept of family in the context of family reunion means a group of people entitled to benefit from this institution.

1. | A third-country national residing lawfully in a Member State reunifying with a third-country national entering from outside the EU

In accordance with **Article 53(2) of the Act on Foreigners of 13 June 2003** (Journal of Laws of 2011 No 264, item 1573, as amended), a family member reunifying with a third-country national residing lawfully in Poland shall be deemed to be:

- a) a person who is married to him/her and the marriage is recognized under the law of the Republic of Poland;
- b) a minor who is a child, including an adopted child, of the foreigner and a person whom the foreigner married and the marriage is recognised under the law of the Republic of Poland;
- c) the foreigner's child, including an adopted child, who is a minor being the foreigner's dependant over whom the foreigner exercises actual parental authority;
- d) a minor being a child of a person referred to in point 1), including an adopted child, who is that person's dependant over whom the person exercises actual parental authority.

Pursuant to the provisions of **Article 53(3) of the aforementioned Act** a lineal ascendant (i.e. the parent) shall also be recognised as a family member of a unaccompanied foreign minor enjoying refugee status and residing on the territory of the Republic of Poland.

Besides, in accordance with **Article 64(1)(1) of the aforementioned Act** a permit to settle shall be granted to a foreigner born on the territory of the Republic of Poland who is a minor child of a foreigner who obtained a permit to settle.

Though this provision does not refer to the regulations on family reunion in the strict sense, but in practice it functions that way.

2. | A mobile EU national reunifying with a third-country national

In accordance with **Article 2(4) of the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members** (Journal of Laws of 2006 No 144, item 1043, as amended), the spouse of a mobile EU national, the child (a direct descendant) of a mobile EU national or of his/her spouse (aged 21 or being a dependant of a mobile EU

national or of a mobile EU national's spouse) and the parent of a mobile EU national being a dependant of the mobile EU national or of the mobile EU national's spouse **shall be recognised** as a family member of the mobile EU national.

A broader list of persons entitled to the reunion with the EU citizen has been set out in **Article 53a(1)(2) of the Act on Foreigners**, according to which the residence permit for a fixed period of time may be granted to a foreigner who, due to the bonds of family nature, intends to join a Polish citizen or a citizen of a Member State of the European Union, a Member State of the European Free Trade Association (EFTA) – a Party to the Agreement on the European Economic Area or Switzerland – residing on the territory of the Republic of Poland, or to stay with him/her if the reason behind application for the permit justifies his/her residing on the territory of the Republic of Poland for a period of time exceeding 3 months.

3. A non-mobile EU citizen reunifying with a third-country national where the EU citizenship gives rise to the right to reside for the third-country national family member on the basis of CJEU jurisprudence

See point 2.4.

4. A non-mobile EU citizen who for example resides in the Member State of birth, reunifying with a third-country national

In the case of the family of a Polish citizen, national legislation governs the issue of granting residence permit to a foreigner – Polish citizen's spouse (the residence permit for a fixed period – Article 53(1)(6) of the Act on Foreigners), a Polish citizen's child being his/her dependant and remaining under his/her parental authority (the permit to settle – Article 64(1)(4) of the aforementioned Act), and to a foreigner connected with a Polish citizen by bonds of family nature (permit for a fixed period – Article 53a(1)(2) of the aforementioned Act).

Concept of paternity

In accordance with **Article 62(1)** and **Article 63 of The Family and Guardianship Code** (Journal of Laws of 1964 No 9, item 59, as amended), if a child was born in the course of a marriage or in the period of time not exceeding three hundred days from the dissolution of marriage or marriage annulment, it shall be presumed that this is a child of the mother's husband. This presumption shall not apply if the child was born after the period of three hundred days from the decree of judicial separation. The child mother's husband may bring an action for determination of paternity within six

months from the date on which he learned that his wife had given birth to the child, but no later than before the child attains full age.

On the other hand, according to provisions of **Article 72(1)** and **Article 73(1) of the aforementioned Act**, if there is no presumption that the child mother's husband is the father of the child or when the presumption has been rebutted, the paternity may be established by way of acknowledgment of paternity or pursuant to the court ruling.

Acknowledgment of paternity takes place when the man the child descends from declares before the head of register office that he is the child's father and the child's mother confirms that he is the child's father at that time or within three months from the date of the man's declaration.

Therefore, the declaration of paternity is false when a joint statement on the child's paternity is made by both parents before the head of the register office. Such a situation may occur when the child's parents are not married or when the presumption that the mother's husband is the father of the child has been rebutted.

2.2. Family reunion in the Polish legislation

Family reunion between two third-country nationals in the EU is regulated by Directive 2004/38/EC. Pursuant to the provisions of the Act on Foreigners an obligatory list of family members set out in Article 4(1) of Directive 2004/38/EC has been implemented in the Polish legal order.

As for Directive 2004/38/WE regulating the status of third-country nationals who are family members of a mobile EU citizen it should be noted that the definition of a family member of an EU citizen set out in the *Act on the entry into, residence in and exit from the territory of the Republic of Poland of nationals of the European Union Member States and their family members* does not cover a partner with whom a EU citizen entered into registered partnership pursuant to the legislation of a given Member State because Polish law does not foresee the possibility to enter into registered partnerships, thereby Poland does not recognise the equivalence of registered partnership and marriage. This does not mean that the above mentioned person cannot obtain a residence permit in Poland. In accordance with Article 3(2) of the aforementioned Directive without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State

shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

- any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;
- the partner with whom the Union citizen has a durable relationship, duly attested.

Thus, accordingly and in line with the provisions of **Article 53a(1)(2) of the Act on Foreigners** the residence permit for a fixed period may be granted to a foreigner who, due to the family ties, intends to join a Polish citizen or a citizen of a Member State of the European Union, of a Member State of the European Free Trade Association (EFTA) – a Party to the Agreement on the European Economic Area or Switzerland – residing on the territory of the Republic of Poland, or to stay with him/her.

According to the common specifications for this study agreed within the European Migration Network, Member States have been asked for describing how national legislation regulates a family reunion that takes place in various scenarios:

1. a family reunion through marriage of a third-country national legally residing in the EU to a third-country national not previously residing in the EU

In accordance with the provisions of **Article 53(1)(7) of the Act on Foreigners** the residence permit for a fixed period may be granted to the spouse as a foreigner's family member, referred to in Article 54, entering the territory of the Republic of Poland or residing on the territory in question for the purpose of joining his/her family if the reason behind application for the permit justifies his/her residing on the territory of the Republic of Poland for the period of time exceeding 3 months.

According to **Article 54 of the aforementioned Act** the residence permit for a fixed period, referred to in Article 53(1)(7), shall be granted to a family member of a foreigner residing on the territory of the Republic of Poland:

- based on a permit to settle;
- based on a long-term resident's EC residence permit;
- enjoying refugee status;
- in connection with granting a subsidiary protection;

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- for at least 2 years based on the residence permits for a fixed period and directly before the submission of the application for the residence permit for a fixed period for a family member – based on a permit issued for the time of stay of no less than one year;
 - based on the residence permit for a fixed defined period, referred to in Article 53(1)(17) (where a foreigner is a scientist entering or residing on the territory of the Republic of Poland for the purpose of scientific research under a hosting agreement for the purposes of carrying out a research project concluded with a scientific institution accredited by the minister responsible for science matters) and Article 53(1)(18) (who has a residence permit, referred to in Article 1(2)(a) of Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals including a 'scientist' annotation, issued by another Member State of the European Union, if the hosting agreement for the purposes of carrying out a research project concluded with a scientific institution of that country foresees scientific research to be carried out also on the territory of the Republic of Poland)
- if the reason behind the application for the permit justifies his/her residing on the territory of the Republic of Poland for the period of time exceeding 3 months.

According to **Article 53b(1) and (2)**, and **Article 60 (5a)(1) of the aforementioned Act** a spouse reunifying with the foreigner referred to above shall have:

- health insurance within the meaning of the provisions on health care system financed with public resources, or the confirmation that the insurer will cover the medical expenses incurred on the territory of the Republic of Poland;
- a stable and constant source of income which suffices to cover his/her subsistence expenses and the subsistence expenses of family members being his/her dependants;
- the legal right to occupy the living premises where the foreigner is residing or intends to reside.

The above mentioned stable and constant source of income requirement is also met when the foreigner's subsistence expenses are covered by a family member responsible for supporting the foreigner and residing on the territory of the Republic of Poland.

Pursuant to **Article 56(2)(1) of the aforementioned Act** a residence permit for a fixed period shall be granted to a foreigner, referred to in Article 53(1)(7) for a period of time for which the residence permit for a fixed period was granted to the foreigner, he/she

intends to arrive or has arrived for the purposes of family reunion; if the foreigner has a permit to settle, a long-term resident's EC residence permit or refugee status granted in the Republic of Poland – for the period of 2 years with the possibility to obtain further residence permits for a defined period of time.

In the case of a family member reunifying with a foreigner residing on the territory of Poland on the basis of a permit to settle or a long-term resident's EC residence permit, the provision of the **Article 57 (3)(1) of the aforementioned Act** is relevant.

According to the above mentioned provision, a residence permit for a fixed period may not be refused to a foreigner who is a spouse of a Polish citizen or of a person who has a permit to settle or a long-term resident's EC residence permit on the territory of the Republic of Poland – if the sole ground for the refusal would be any of the reasons referred to in Article 1(3) (the circumstances of a given case indicate that the purpose of entry or stay of a foreigner on the territory of the Republic of Poland is or will be different from the one declared) and Article 1(7) – (9) (he/she was diagnosed with or is suspected that might have succumbed to an illness or an infection subject to obligatory treatment pursuant to a relevant act, and the foreigner does not consent to the treatment; fails to meet his/her tax obligations towards inland revenue; failed to reimburse the removal expenses financed from the national budget; resides illegally on the territory of the Republic of Poland).

2. a family reunion through marriage of a third-country national to a non-mobile EU citizen

Pursuant to **Article 53(1)(6) of the aforementioned Act** the residence permit for a fixed period shall be granted to a foreigner who is a Polish citizen's spouse. The legalisation of the residence of a foreigner being a Polish citizen's spouse is possible on preferential conditions because he/she is exempted from the obligation to have health insurance, a stable and constant source of income and the legal right to occupy a living premises, referred to in point 1, where the foreigner is residing or where he/she intends to reside.

According to **Article 56(1) of the aforementioned Act** the residence permit for a fixed period shall be granted each time for a period of time needed to achieve the purpose of stay of the foreigner on the territory of the Republic of Poland, however, not exceeding 2 years, with the possibility to obtain further residence permits for a defined period of time.

In the case in question the provisions of **Article 57(3)(1) of the aforementioned Act** presented in the previous scenario apply (in the circumstances described, the granting of a residence permit for a fixed period shall not be refused to a foreigner being the

spouse of a Polish citizen or of a person who has a permit to settle or a long-term resident's EC residence permit on the territory of the Republic of Poland).

3. a family reunion through paternity, as regards the father of a child who is a third-country national legally residing in the EU

According to the Polish law, in case of children who are third-country nationals legally residing in the EU, the obtaining a residence permit through the family reunion is possible only for the refugees' fathers. Parents of the children belonging to other categories of third country nationals legally residing in the EU may legalize their stay, but using other reasons than a family reunion.

Pursuant to **Article 53(1)(7) of the aforementioned Act** the residence permit for a fixed period shall be granted to a foreigner who, as a family member of a foreigner who has *inter alia* a permit to settle, a long-term resident's EC residence permit or refugee status on the territory of Poland, enters the territory of the Republic of Poland or resides on this territory for the purpose of family reunion, if the reason behind the application for the permit justifies his/her residing on the territory of the Republic of Poland for the period of time exceeding 3 months.

Should an application be submitted by a foreigner (a third-country national) who is the father of a minor being a third-country national with the right of residence in Poland, the residence permit for a fixed period may be granted if the foreigner demonstrates that the reason behind the application for the permit justifies his/her residing on the territory of the Republic of Poland for the period of time exceeding 3 months.

In accordance with **Article 53(3) of the aforementioned Act** a lineal ascendant (i.e. the parent) shall also be recognised as a family member of a unaccompanied foreign minor enjoying refugee status and residing on the territory of the Republic of Poland.

According to **Article 53b(1) and (2)** and **Article 60 (5a)(1) of the aforementioned Act** a family member reunifying with the above mentioned foreigner shall have the above mentioned health insurance, a stable and constant source of income and the legal right to occupy a living premises where the foreigner is residing or where he/she intends to reside. According to **Article 53b(4) of the aforementioned Act** the provisions of paragraph 1 (1) and (2) are not applicable to a foreigner applying for a residence permit for a fixed period pursuant to Article 53(1)(7) who is a family member of a foreigner enjoying refugee status or subsidiary protection if the application for the residence permit for a fixed period was submitted within 6 months from the date of obtaining refugee status or subsidiary protection.

4. a family reunion through paternity as regards the father of a child who is an EU citizen

Pursuant to **Article 1 of the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members**, the Act sets out the rules and conditions for entering, staying and leaving the territory of the Republic of Poland by:

- a) citizens of the Member States of the European Union;
- b) citizens of Member States of the European Free Trade Association (EFTA) – parties to the Agreement on the European Economic Area;
- c) citizens of Switzerland;
- d) family members of citizens, referred to in points a-c, who join them or reside with them

– and also the proceedings and the authority competent in these matters.

Pursuant to **Article 2(3), the aforementioned Act** applies to:

- a) citizens of the Member States of the European Union,
- b) citizens of Member States of the European Free Trade Association (EFTA) – parties to the Agreement on the European Economic Area,
- c) citizens of Switzerland.

In this text the term ‘UE citizen’ will be used to describe all of the aforementioned categories. In accordance with **Article 2(4)(c) of the aforementioned Act** a family member means a foreigner who is or is not an EU citizen and who is a direct ascendant (the parent) of an EU citizen or his/her spouse, being a dependant of the EU citizen or of the EU citizen’s spouse.

Therefore, a third-country national – the father of an EU citizen not being a Polish citizen – is entitled to enter and stay under the rules set out in the aforementioned Act if he is a dependant of the EU citizen (*theoretically possible*) and if he joins or stays with the aforementioned citizen on the territory of Poland.

In practice, it often happens that the staff of voivodship offices decide to grant a residence permit for a fixed period of time to a father of an EU citizen not being a Polish national on the basis of provisions of the **Article 53a(1)(2) of the Act on Foreigners**, enabling the family reunion indirectly. According to **Article 53a(1)(2) of the aforementioned Act** the residence permit for a fixed period may be granted to a

foreigner (a third-country national) who is the father of a minor who is an EU citizen if he demonstrates that, due to the family ties, he intends to join the Polish citizen or the citizen of a Member State of the European Union, a Member State of the European Free Trade Association (EFTA) – a Party to the EEA Agreement or Switzerland – residing on the territory of the Republic of Poland, or to stay with him/her.

A foreigner who resides on or enters the territory of Poland for the purpose of family reunion in line with **Article 53b(1)(1) and (2) of the aforementioned Act** shall have health insurance and a stable and constant source of income sufficient to cover his/her subsistence expenses and the subsistence expenses of his/her family. In contrast, the aforementioned provisions (paragraph 1 points (1) and (2)) are not applicable to a foreigner applying for a residential permit for a defined period of time pursuant to **Article 53(1)(7) of the aforementioned Act** (family reunion) who is:

- a family member of a foreigner enjoying refugee status or subsidiary protection if the application for the aforementioned permit was submitted within 6 months from the date of obtaining refugee status or complementary forms of protection;
- a minor who is a child of the foreigner who is married to a Polish citizen and obtained a residence permit for a defined period of time granted pursuant to Article 53(1)(6) or a permit to settle granted on the grounds of being married to a Polish citizen.

Pursuant to **Article 97(1)(1a) of the Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland** (Journal of Laws, 2009, No. 189, item 1472, as amended) a foreigner shall be granted a permit for a tolerated stay on the territory of the Republic of Poland if his/her removal would violate the right to family life within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 or the rights of the child set out in the Convention on the Rights of the Child of 1989 to the extent threatening the child's psychophysical development. Article 9(1) of the Convention on the Rights of the Child stipulates that States Parties shall ensure that a child shall not be separated from his or her parents against their will.

In contrast, pursuant to **Article 89 (1)(1) of the Act on Foreigners** the removal decision shall not be issued, and if it has been it shall not be executed, if there are grounds for granting a permit for tolerated stay pursuant to Article 97.

2.3. Regulating the issues of the prevention of the abuse of residence permits for the purpose of family reunion in national legislation (provisions, gaps, considered changes)

In order to prevent the abuse of residence permits the issue whether a marriage was concluded only to legalise a stay is examined. If it is found out that a marriage was one of convenience, the residence permit is refused (other consequences are described in point 3.7).

1. Marriage of a third-country national residing lawfully in a Member State to a third-country national entering from outside the EU

Pursuant to **Article 55 (1) of the Act on Foreigners** the authority conducting proceedings for granting a residence permit for a fixed period to a foreigner married to a Polish citizen or to a foreigner residing on the territory of the Republic of Poland, referred to in Article 54 of the aforementioned Act (see point 2.2.1), shall establish whether the marriage was not entered into in order for the foreigner to circumvent the provisions on granting the residence permit for a fixed period on the territory of the Republic of Poland, if the circumstances suggest that:

- a) one of the spouses consented to a marriage for the purpose of financial gain, unless it is customary to do so in a given country or social group;
- b) the spouses fail to fulfil legal obligations arising from entering into marriage;
- c) the spouses do not live together;
- d) the spouses have never met before their marriage;
- e) the spouses do not speak a language that they both understand;
- f) the spouses are not unanimous as for their personal data and other important information concerning them;
- g) one of spouses or both of them have entered into marriages of convenience in the past.

In addition, the above mentioned circumstances are also checked in the case of proceedings associated with expulsion of a foreigner married to a Polish citizen or of a foreigner who has a permit to settle or a long-term resident's EC residence permit, whose further stay does not constitute a threat to State defence or security or a threat to public security and order (pursuant to Article 89(3) of the aforementioned Act).

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2. | Marriage of a mobile EU national reunifying with a third-country national

Pursuant to **Article 25 of the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members**, if the proceedings on issuing a residence card to a family member of an EU citizen reveal the circumstances which suggest that:

- a) one of the spouses consented to a marriage for the purpose of financial gain, unless it is customary do to so in a given country or social group,
- b) the spouses fail to fulfil legal obligations arising from entering into marriage,
- c) the spouses do not live together,
- d) the spouses have never met before their marriage,
- e) the spouses do not speak a language that they both understand,
- f) the spouses are not unanimous as for their personal data and other important information concerning them,
- g) one of or both spouses have entered into marriages of convenience in the past
 - the authority conducting the proceedings shall establish whether the marriage to an EU citizen was not concluded as one of convenience.

3. | Marriage of a non-mobile EU national to a third-country national where the EU citizenship gives rise to the right to reside for the third-country national family member on the basis of jurisprudence

In such a case the general rules on marriages of foreigners to Polish citizens apply.

4. | Marriage of a non-mobile EU citizen who, for example, resides in his country of birth to a third-country national

For the purposes of administrative proceedings for:

- a) granting a residence permit for a fixed period to a foreigner – the spouse of an EU citizen (Article 55 (1) of the Act on Foreigners),
- b) granting a permit to settle to a foreigner – the spouse of an EU citizen (Article 64 (3) of the aforementioned Act),
- c) expulsion of a foreigner married to a Polish citizen, whose further stay does not constitute a threat to State defence or security or a threat to public security and order (Article 89(3) of the aforementioned Act)

- the above cited provision of Article 55 of the Act on Foreigners (see point 2.3.1) applies.

* * *

In the case of marriages of Polish citizens residing on the territory of the Republic of Poland to citizens of the so-called third countries, national legislation regulates quite well the issue of the abuse of the institution of marriage to obtain the right of residence (to reside in Poland for a fixed period or to settle). The collected evidence on a marriage of convenience results in the refusal to grant the permit applied for or in its revocation (if the evidence has come to light after the permit was granted), and the auxiliary provisions suggest what circumstances may point to a marriage of convenience. However, the current wording of the provisions of the Act refers to a marriage ‘entered into’ to circumvent the law thereby it allows the foreigners to benefit from the fact that they entered into marriage to a Polish citizen in good faith but in the course of years the marriage broke down and in practice the spouses live apart. In such situations the foreigners still often refer to their marriage as the reason of their intention to further legalise their stay in the country and conceal the actual separation. Therefore, the wording ‘marriage entered into to circumvent the law’ contained in the Act should be replaced with the term ‘marriage existing to circumvent the law’. The issue is to be address in the new Act of Foreigners.

The issue of marriages of the citizens of other EU Member States residing in Poland to foreigners who are the citizens of the so-called third countries should be addressed separately. *The Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members* regulates the granting of permits on the basis of such marriages. It provides for legal instruments similar to those mentioned above; and in this case there also exists a problem similar to that which arises when applying the Act on Foreigners, i.e. the term ‘marriage entered into out of convenience’ is used while the term ‘marriage existing out of convenience’ would be more relevant.

The aim of the above cited regulations is to prevent the abuse of residence permits; however, there are no systemic solutions that would make it possible, under a legally binding decision certifying that the purpose of a given marriage is to circumvent the law, to prevent the abuses in other spheres of public life, for example in the case of obtaining social welfare payments, the settlement of joint property, joint taxation of spouses, etc.

Moreover, there are gaps as far as restricted possibilities to verify, for example, how the spouses met each other and other issues concerning their private life in the

course of administrative proceedings are concerned. The only authorities entitled to conduct inspections and community interviews at the place of residence declared by the spouses include the Border Guard, Head of the Office for Foreigners and provincial governors.

A revision of the provisions on granting residence permits for a fixed period to third-country nationals who does not have the right of residence on the territory of the Republic of Poland should also be taken into account. Marriage is the simplest way of legalising a stay in Poland for persons residing without authorisation and of obtaining the right of permanent residence and Polish citizenship in the long run. In the light of current provisions, in line with **Article 57(3)(1) of the Act on Foreigners**, granting a residence permit for a fixed period shall not be refused to a foreigner, the spouse of a Polish citizen or of a person who has a permit to settle or a long-term resident's EC residence permit, if the sole ground for the refusal would be any of the reasons referred to in paragraph 1 (3) and (7)–(9) (point (9) – the person resides illegally on the territory of the Republic of Poland).

2.4. The impact of the European case law on family reunion

In the case of family reunion with non-mobile UE citizen who does not exercise free movement and residence on the territory of other Member States, the applicable national law on migration concerning mainly persons residing on the territory of Poland without authorisation should be referred to.

As mentioned above, pursuant to **Article 97(1)(1a) of the Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland** a foreigner shall be granted a permit for a tolerated stay on the territory of the Republic of Poland if his/her removal would violate the right to family life within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, or the rights of the child set out in the Convention on the Rights of the Child of 1989 to the extent threatening the child's psychophysical development.

Unauthorised residence of the foreign spouse of a Polish citizen does not constitute the grounds for the refusal to grant a residence permit for a fixed period. In addition, when granting the above mentioned permit an exception is made from the spouse's obligation to have a stable and constant source of income sufficient to cover his/her subsistence expenses and the subsistence expenses of family members being his/her

dependants, health insurance and the legal title to occupy a residential unit where he/she is residing or intends to reside.

The impact of the European case law on family reunion can be noticed in the decisions on residence legalisation issued in the second instance or by court judgements.

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3.1. Marriages of convenience and false declarations of paternity as means of abusing the residence permits issued for the purposes of family reunion – problem specificity and context

Marriages of convenience

Given the liberal nature of the provisions on granting the residence permits to spouses of Polish citizens, the majority of abuses occur under this “family reunification scenario”. For a few years the revealed number of marriages of convenience between foreigners and Polish citizens has been growing.

So-called ‘marriage of convenience’ to an EU citizen tend to be one of the most popular methods to obtain residence permits for a fixed period/permit to settle on EU/Schengen territory and original documents entitling to free movement in EU/Schengen countries. The scale of the phenomenon is growing.

The practice involves organised groups which arrange such marriages and provide relevant documents subsequently submitted to the heads of registry office. The investigations conducted by the Police and the Border Guard revealed cases of very professional counterfeits of documents.

The investigations are very labour-intensive and require a lot of activities, such as: thorough questioning of the parties and witnesses, extended evidence gathering, requests to other authorities for additional information and opinions, request for (frequently several) community interviews, collection of historical records of the foreigner (e.g. refugee records, excerpts of court and police records and the records of the Prosecution, removal records, the Border Guard documents), field tasks carried out by the office staff (evidence from inspections, questioning of witnesses, etc.).

Intentional concealment of personal data of foreign spouses involving the change of the data (this mainly done by the citizens of Ukraine, Armenia, Vietnam) is another problem associated with the administrative proceedings on family reunion. This frequently is connected with a desire to avoid consequences of some previous events (when a given person is wanted, when he/she is listed in the register of undesirable foreigners or was listed in the register in the past, but at the same time used different personal data to cross the national border illegally).

The staff of voivodeship offices emphasize that there is no statutory possibility to annul a marriage of convenience from the time of its conclusion (*ex tunc*).

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Marriages of convenience do not contribute to a large number of residence permit refusals, especially as regards actual entering into a marriage of convenience to circumvent the law. Though there are cases in which foreigners facing deportation marry Polish citizens.

Although it cannot be said that the majority marriages to nationals of a given third-country are entered into out of convenience, certain trends and alarming phenomena may be noticed. For example, in 2009–2010 there was a noticeable increase in the number of Polish-Nigerian marriages.

Typical of marriages of convenience to Polish citizens is the geographical differentiation of countries of origin of the ‘wives’ (who, most frequently, are the nationals of Eastern neighbouring countries) and the ‘husbands’ (the nationals of North Africa countries).

The largest number of marriages that the foreigners are using for their purposes while the Polish women enter into them in good faith occur between Polish women and nationals of Maghreb countries. In such cases foreigners aim for family enlargement as even after they divorce from their Polish wives they can still obtain residence permit on the grounds of the guardianship held over their minor children who have Polish citizenship.

In the majority of cases it can be proven that a foreigner entered into a marriage of convenience if his/her spouse – a Polish citizen – admits before the authority carrying out the proceedings for the granting the residence permit that he/she has married the foreigner in exchange for financial gain.

Foreigners who legalise their stay on the grounds of being married to a Polish citizen after 3 years of marriage and 2 years of residence under a residence permit for a fixed period usually obtain a permit to settle. Frequent practice is that having obtained the right of permanent residence or Polish citizenship the foreigners file for divorce from the Polish citizen. After they get divorced, they often marry a national of his/her country of origin residing without authorisation within or outside the territory of the Republic of Poland. Next, they apply for a residence permit for a fixed period on the grounds of family reunion. The mechanism described above is used to facilitate the legalisation of third-country nationals stay on the territory of the EU.

The phenomenon of marriages of convenience is rarely taken up by the media. There is no uniform campaign informing people about this problem and its consequences (among other things about foreigners escaping to other EU countries, problems with a divorce and the risk of the foreigner taking over personal goods such as an apartment, a car, a company or money kept in the bank account).

False declarations of paternity

False declarations of paternity are less frequent than marriages of convenience and their detection rate is unfortunately scarce. Detected cases of false declarations of paternity most frequently occur also under the fourth scenario (Polish citizens, persuaded and financially motivated, submit false statements admitting to being the parents of, in fact, someone else's foreign child).

If, pursuant to **Article 62 or 73 of The Family and Guardianship Code**, it is recognised that in the light of the Polish law a Polish citizen is the father of a foreigner's child, then:

- the foreign woman's child can [groundlessly] acquire Polish citizenship within 1 year from the day on which the child was born;
- if a minor child of a foreign woman fails to acquire Polish citizenship, the child can obtain permit to settle pursuant to Article 64 (1)(4) of the Act on Foreigners;
- the child's mother may legalise her stay on the territory of Poland based on a residence permit for a fixed period or a permit for a tolerated stay granted due to the fact that a decision on the removal from the territory of Poland could not be issued or exercised as it would constitute an infringement of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the Convention on the Rights of the Child.

As far as the Polish citizenship acquisition by a foreign child is concerned it should be mentioned that, pursuant to **Article (6)(1) of the Act on Polish Citizenship**, a child of a Polish citizen and of a national of another country acquires Polish citizenship by birth. However, by means of the statement submitted unanimously before a competent authority within three months from the day of the child's birth the parent may choose citizenship of another foreign country for the child if one of the parents is a national of that country and if under that country's law the child shall acquire its citizenship.

Pursuant to **Article 7(1) of the aforementioned Act**, while deciding on the citizenship of a child, changes in the determination of the child's parent(s) and of the parent(s) citizenship shall be considered provided they occurred within one year from the day of the child's birth. The three-month period set out in **Article 6(1) and (2) of the aforementioned Act** commence on the date of the identification of the change.

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Changes to paternity establishment arising from a court ruling following an action for determination of paternity or an action for the annulment of an acknowledgment of paternity shall be considered when determining the child's citizenship unless the child has already come of age. If the child is sixteen or older, the change of citizenship may only take place with the child's consent.

If the child has been officially acknowledged and the personal data of a Polish citizen are entered in the child's birth certificate, it cannot be determined whether the declaration of paternity was false or not, excluding the cases where the Polish citizen admits to having submitted a false declaration.

Foreigners who enjoy the status of long-term EC residents or who have a permit to settle may falsely acknowledge their paternity before the head of register office to facilitate the legalisation of stay of children originating from their country of origin on the territory of the Republic of Poland. On the other hand, foreigners who do not enjoy the right of residence in Poland may acknowledge their paternity in respect of children of the EU citizens to legalise their stay (e.g. obtaining a permit for tolerated stay).

Even if the evidence of the spouses that the child's father is the foreigner is successfully undermined in the course of administrative proceedings (e.g. after the analysis of foreigners' historical records from different periods of time) and a request is subsequently directed to the Prosecution to initiate measures resulting in bringing proceedings for the determination of paternity before the court, the prosecutors abandon such measures. On the one hand, objective obstacles arise when, for example, the man acknowledging his paternity resides outside Polish borders and his place of residence is unknown (thus it is impossible to question him, obtain his declaration of paternity of the child, collect his genetic material for possible DNA testing and issue an opinion concerning his paternity), the wife refuses to name the biological father and no provisions exist that would entitle the prosecutor to use any coercive measures in case of the refusal to give such information. Besides, in bringing proceedings for the determination of paternity, the prosecutor shall act above all in the best interests of the child. If a minor has alimony rights and the right to inherit from the man declaring his paternity of the child, and he/she would not be able to acquire these rights from his/her biological father who is unknown, then in case of determination of paternity the legal situation of the child would deteriorate significantly.

3.2. Other forms of abuse detected in Poland

The staff of voivodeship offices listed the following abuses:

- foreigners using false medical certificates of a [in fact non-existent] pregnancy in order to obtain residence permit by the child's 'father';
- concealing one's identity and giving false personal data;
- abuse of regulations in order to obtain gradual legalisation of the stay of individual family members (example given by one of the voivodeships: a permit for tolerated stay was granted to a foreigner as the foreigner could not be removed from the country for she did not have an identity document; after a few years an application for a permit for tolerated stay was submitted for the foreigner's child; the permit was granted on the basis of the provisions of the Convention of the Rights of the Child; after the permit for tolerated stay was granted to the child, an application for legalising the stay was submitted by the child's father with whom the mother allegedly had not have contact before and whom she had married in the meantime – the father has applied for a permit for a tolerated stay based on the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms under which a family may not be separated).

3.3. Prevention of marriages of convenience and false declarations of paternity

Point 2.3. describes provisions governing the prevention of the abuse of the procedure of legalising a foreigner's stay for the purpose of family reunion.

The practice of voivodeship offices indicates that the prevention rate in the case of the abuse, such as marriages of convenience, is very low. The cases of marriages of convenience that came to light lead almost exclusively to the refusal of granting the right of residence. In few cases people involved in the practice are charged under the criminal law, for example, for false evidence during the proceedings. However, the sentences in such cases are lenient and fail to lead to discontinuation of the activity or to be deterrent. Financial penalties are calculated in the activities of organised criminal groups involved in the practice. The criminal law does not provide for the penalisation of 'marriages of convenience'.

For the false declarations of paternity, pursuant to **Article 86 of The Family and Guardianship Code** applications to establish paternity or actions for determination of paternity may inter alia be brought by a prosecutor if the best interest of the child or the protection of the public interest so requires. Therefore, when a false declaration of paternity aimed at legalising the stay of a foreigner is detected, a competent authority may request the prosecutor to initiate proceedings pursuant to the above cited provision. Point 3.1 describes the difficulties which in practice frequently make it entirely impossible for the prosecutor to act effectively.

Pursuant to **Article 73(3) of the Family and Guardianship Code** the head of registry office shall refuse to accept statements necessary for the acknowledgement of paternity if the acknowledgement is inadmissible or if doubts arise as to the child's origin.

When a statutory representative submits a request for the confirmation of Polish citizenship of a child acknowledged by a Polish citizen, there are no instruments that the voivode could use to investigate false declarations of paternity.

3.4. Factors triggering an investigation by the authorities and ways of detecting the cases of marriages of convenience and false declarations of paternity

Marriages of convenience

Marriages of convenience may be detected in the course of evidence hearing (based on the testimony of the spouses and of witnesses and on the information collected during community interview) in the cases concerning legalisation of the stay of foreigners – the spouses of Polish citizens and third-country nationals legally residing on the territory of Poland, cases concerning removal of a third-country national who is the spouse of a Polish citizen or of a foreigner who has a permit to settle or a long-term resident's EC residence permit and in cases concerning issue of a residence card or permanent residence cards of a EU citizen family member.

Marriages of convenience are most frequently detected in cases concerning the issue of a residence permit for a fixed period to a foreigner on the grounds of his/her marriage to a Polish citizen or to a foreigner legally residing on the territory of Poland.

Abuse is sometimes detected as a result of the cooperation with the persons involved, but such cases are very rare as they are usually scared of the legal consequences if they admit that they entered into a marriage of convenience. They turn to national

authorities when their fictitious spouses or false parents of their children make their lives difficult.

In most cases, pursuant to **Article 11c of the Act of 13 June 2003 on Foreigners**, the Voivode recommends that Border Guard officers should carry out community interviews, determine the place of residence of the spouse (or of other family member of the foreigner, and also of a person the foreigner is connected with family ties); if the steps taken fail to confirm the information given by the foreigner or information collected is found contradictory or if doubts arise as to the information validity, the Border Guard officers may search the premises indicated by the foreigner as his/her place of residence.

In practice, the Border Guard liaison officer in the Voivodeship Office selects for community interview, in cooperation with the official carrying out the proceedings, the foreigners who submitted to the Voivode the applications for the permit to reside on the territory on the Republic of Poland and require additional measures aimed at verifying the statements submitted in the course of the proceedings. The Border Guard officers carry out community interviews at the place of the declared residence of the foreigner with people who he/she lives with, people living in the nearest vicinity (the neighbours) or working in the vicinity of the foreigner's home (shopkeepers, postmen, etc.), collecting information on the foreigner depending on the declared purpose of stay. If, based on the information collected, there are grounds for suspecting that the foreigner entered into a marriage of convenience to a citizen of the Republic of Poland, then the Voivode, upon receiving the report on the steps taken under the community interview, carries out measures aimed at verifying the foreigner's statements in the context of the Border Guard officers' findings of the community interview. If in the course of the proceedings the Voivode finds the information collected by Border Guard officers true, he issues the decision to refuse the residence permit for a fixed period, which, after it becomes final (in case the foreigner does not leave the territory of the Republic of Poland), entitles the Border Guard to initiate measures aimed at issuing a decision which will require the foreigner to leave the territory of the Republic of Poland, or at requesting the Voivode to expel the foreigner from the territory of the Republic of Poland.

The staff of the voivodeship offices' own findings, including the collected documentation, the evidence gathered by way of questioning the witnesses and the parties, reports from the inspections of the premises; historical records on the foreigners stay in Poland; the Police databases and data obtained from other authorities; registry office records, judicial documents, etc. also constitute the sources of information on the potential marriages of convenience.

False declaration of paternity

The cases of false declarations of paternity are detected in the course of evidence hearing (based on the public registry records, the evidence provided, other facts concerning the case) in connection with:

- granting residence permit for a fixed period to a third-country national;
- expulsion of a third-country national in the course of the investigation whether the removal is in line with Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms or it would infringe the rights of the child set out in the Convention on the Rights of the Child;
- issuing a residence card of the EU citizen family member.

False declarations of paternity are most frequently detected in the cases of granting a residence permit for a fixed period of time to a third-country national of and of removal of a third-country national.

One of the main measures consists in verification of the authenticity of documents filed (e.g. birth certificates) by way of consultation with the competent authority (e.g. via Polish diplomatic posts). In the case of the acknowledgement of paternity at the Polish register office, the authority requests the head of the register office to provide the dossier related to the birth certificate and interrogates the child's parents (the dossier of the public registry records includes the documents and statements submitted at the time of or after drawing up birth, marriage and death certificates as well as documents delivered to the register offices by courts and other national authorities).

3.5. Evidences needed to prove that a marriage/declaration of paternity is false

Marriages of convenience

Pursuant to a general rule provided for in **Article 7 of the Act of 14 June 1960 – the Code of Administrative Procedure** (Journal of Laws of 2000 No 98, item 1071, as amended) – public administration bodies shall uphold the rule of law during proceedings and shall take all necessary steps to clarify the facts of a case and to resolve it, having regard to the public interest and the legitimate interests of members of the public. Therefore, in principle the burden of proof lies on the public administration body carrying out

the proceedings for legalisation or granting the right of residence of foreigners on the territory of Poland. Besides, pursuant to **Article 107(3) of the aforementioned Act**, to justify its decision the body should mention *inter alia* the facts that the body regards as proven, the evidence relied upon and the reasons for which other evidence has been treated as not authentic and without probative force.

Pursuant to **Article 75(1) of the Code of Administrative Procedure** anything that is not contrary to law and that is of assistance in clarifying a case shall be admissible as evidence.

In particular, evidence includes the testimony of the party (the foreigner), testimonies of witnesses (including the spouse), documents and the opinions of experts.

In the case of the first and the fourth scenarios of family reunion, pursuant to **Article 11c of the Act of Foreigners**, the report on the community interview carried out by Border Guard officers or on steps taken to determine the place of residence of the spouse or of other family member of the foreigner as well as of a person the foreigner is connected with by family ties shall also constitute the additional means of proof. In the case of family reunions under the above scenarios, pursuant to **Article 55(2) of the Act on Foreigners**, while carrying out operations to determine the circumstances referred to in paragraph 1 (i.e. circumstances that demand to examine whether the marriage has been one of convenience or not) **Article 79 of the Code of Administrative Procedure** does not apply – thus, the party is not given a notice of the location and date of the taking of evidence and the party does not have the right to participate in the taking of evidence.

According to the criminal law the burden of proof lies on the body carrying out the proceedings (Article 5 of the Code of Criminal Procedure) in accordance with the principle of the presumption of innocence. Evidence is collected in accordance with Part V of the Code of Criminal Procedure and evaluated in accordance with the principle of the unfettered evaluation of evidence.

False declarations of paternity

Family ties shall be confirmed by the child birth certificate. Pursuant to **Article 4 of the Act of 29 September 1986 – Law on Civil Status Records** (Journal of Laws of 2011 No 212, item 1264, as amended) – vital records constitute sole evidence of events stated therein; the fact that they are false can only be proven by court proceedings.

According to the Family and Guardianship Code, only the child, the child's mother, the mother's spouse or the man who has acknowledged his paternity and the prosecutor

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shall have the right to bring proceedings to prove that the above mentioned document contains false information on the child's paternity.

A false declaration of paternity may be revealed through the evidence or a community interview. Based on the collected evidence (the parties' explanation, testimonies of the witnesses, lists of border crossings, etc.), the authority carrying out the proceedings on stay legalisation may determine whether there are grounds for establishing that the man is the biological father, i.e. whether the alleged parents met in the so-called fertility period.

3.6. National Authorities responsible for detecting misuse

The responsibility for abuse detection lies with the public administration bodies competent for legalisation of the stay or for the right of residence of foreigners on the territory of Poland.

The competent first instance authorities include the voivodes with jurisdiction over the foreigner's place of residence. The Head of the Office for Foreigners is the second instance authority.

The abuse detection procedure also involves the Border Guard and the Police.

The false declarations of paternity may arouse suspicion of an abuse of the head of register office or the prosecutor.

Pursuant to **Article 304(1) of the Code of Criminal Procedure**, upon learning that an offence prosecuted ex officio has been committed, it is a social responsibility to inform the prosecutor and the Police thereof.

3.7. Penalties imposed against those misusing the right to family reunification and their impact

The Penal Code does not provide for different criminal liability for foreigners and for the citizens of the Republic of Poland. Criminal sanctions are set out in individual articles of the Penal Code.

Marriages of convenience

(if the facts of a case show that a marriage of convenience has been entered into solely for the purpose of allowing an interested person to enter and reside)

1. Marriage of a third-country national residing lawfully in a Member State to a reunifying third-country national entering from outside the EU
 - the consequences under the national migration provisions

Pursuant to **Article 57(1)(4) of the Act on Foreigners** a residence permit for a fixed period shall be refused to a foreigner if the permit has been applied for on the grounds of a marriage to a Polish citizen, or to a foreigner residing on the territory of the Republic of Poland referred to in Article 54, and the marriage has been entered into to circumvent the provisions on the residence permit granting for a fixed period.

In addition, pursuant to **Article 55 (1)(7) of the aforementioned Act** in the case of a foreigner who applies for another residence permit for a fixed period based on a another marriage to a Polish citizen or to a foreigner residing on the territory of the Republic of Poland referred to in Article 54, the authority is required to carry out a detailed investigation procedure to determine whether the marriage has not been entered into to circumvent the provisions on the residence permit granting for a fixed period.

Pursuant to **Article 58(1)(2)** a residence permit for a fixed period granted to a foreigner shall be revoked if at least one of the circumstances referred to in Article 57(1)(2) or (3)-(9) has occurred (for example the permit was applied for on the grounds of entering into a marriage and the marriage was entered into to circumvent the provisions on the residence permit granting for a fixed period).

If during the proceedings for expulsion of a foreigner it is found that a marriage was concluded for convenience, the provision of Article 89(1)(2) of the Act on Foreigners that a foreigner's expulsion decision shall not be issued and an issued decision shall not be executed if the foreigner is married to a Polish citizen or to a foreigner who has a permit to settle or a long-term resident's EC residence permit and if his/her further stay does not constitute a State defence or security threat or a threat to public security and order, shall not apply.

- criminal liability

A foreigner and his/her fictitious spouse may be liable to prosecution pursuant to **Article 233 of the Penal Code** (Journal of Laws of 1997 No 88, item 553, as amended)

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– ‘Anyone who gives false testimony or who withholds information while giving testimony to be used in a court proceedings or in any other proceedings carried out pursuant to the Act, shall be liable to a term of imprisonment of up to 3 years’.

A fictitious spouse, as a person who illegally enables or facilitates another person’s residence on the territory of the Republic of Poland, may be liable to prosecution pursuant to **Article 264a of the aforementioned Code** – ‘Anyone who, for pecuniary benefit or personal gains, illegally enables or facilitates another person’s residence on the territory of the Republic of Poland shall be liable to a term of imprisonment of 3 months to 5 years’.

2. | A mobile EU national reunifies with a third-country national

– [the consequences under the national migration provisions](#)

Pursuant to **Article 31 (2) of the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members**, a residence card of an EU citizen’s family member is refused to a family member whose marriage to an EU citizen has been entered for the purpose of convenience. If a residence card of an EU citizen’s family member was issued to a foreigner, pursuant to **Article 36(1)(3)** the aforementioned residence permit shall be revoked.

As far as the abuses of confirmation of the right of permanent residence on the territory of the Republic of Poland are concerned it should be noted that pursuant to **Article 56(2) of the aforementioned Act** the family member who is not an EU citizen shall be refused a permanent residence card of an EU citizen’s family member in the case of a marriage of convenience.

Pursuant to **Article 60(2)(3) of the aforementioned Act** a permanent residence card of an EU citizen’s family member issued to a foreigner shall be revoked if the marriage of a family member who is not an EU citizen to an EU citizen has been entered for the purpose of convenience.

In addition, in line with the provisions of **Article 25(7) of the aforementioned Act** when a foreigner applies for a residence card of an EU citizen’s family member on the grounds of another marriage to an EU citizen, the authority is required to carry out a detailed investigation to determine whether the marriage has been entered for the purpose of convenience or not.

– [criminal liability](#) – as above.

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3. A non-mobile EU citizen reunifies with a third-country national where the EU citizenship gives rise to the right to reside for the third-country national family member based on CJEU jurisprudence

The consequences are analogous to those described under subsection 4) – see below.

4. A non-mobile EU citizen who, for example, resides in his/her country of birth, reunifies with a third-country national

– the consequences under the national migration provisions

It should be noted that in the case of a foreigner who is a Polish citizen's spouse and applies for or has obtained a permit to settle:

- a) pursuant to **Article 66(1)(5) of the Act on Foreigners** a permit to settle is refused to the foreigner if the permit is applied for on the grounds of a marriage to a Polish citizen and the marriage has been entered into only to circumvent the provisions on granting the residence permit for a defined period of time or the permit to settle;
- b) in line with **Article 68(1)(2) of the aforementioned Act** a foreigner's permit to settle shall be revoked if he/she gave false testimony or concealed the truth or counterfeited or forged a document which he/she intended to use or used as an authentic document during the proceedings on granting the permit to settle.
- the criminal liability – the same as provided for in subsection 1.

* * *

It should be borne in mind that a marriage of convenience concluded by a foreigner in the past to circumvent the provisions legalising the stay does not necessarily mean that such motivation will be behind his/her next marriage. Besides, the refusal to grant a residence permit issued in the first instance, and only in the relevant proceedings, means, *inter alia*, that the authority of second instance may overrule the decision (that is often the case), and if the latter sustains the decision it can still be overruled by a court. Regardless of the above, a foreigner may submit a new application for a residence permit on other grounds and he is likely to be granted the permit.

Those who have been proven to enter into a marriage of convenience and to participate in the above mentioned offence, may also be subject to charges under **Article 258 of the Penal Code** (participation in an organised criminal group), **Article 270 of the Penal Code** (forgery of documents) and **Article 272 of the Penal Code** (obtaining the attestation of an untruth from an official under false pretences).

False declarations of paternity

(when the child's birth certificate indicates that someone else is the child's father or if the paternity established in the birth certificate has been refuted in a court proceedings)

1. A third-country national residing lawfully in a Member State who reunifies with a third-country national entering from outside the EU

– the consequences under national migration provisions

Pursuant to **Article 57(1) and (6) of the Act on Foreigners** a residence permit for a fixed period is refused to a foreigner who fails to fulfil the statutory requirements or who, during the proceedings on the residence permit granting for a fixed period, has submitted an application or enclosed documents with false personal data or false information or who has given false testimony or concealed the truth or counterfeited or forged a document which he/she intended to use or used as an authentic document.

Pursuant to **Article 58(1)(2) of the aforementioned Act** a residence permit for a fixed period granted to a foreigner shall be revoked if at least one of the circumstances referred to in Article 57(1)(2) or (3)–(9) has occurred.

In addition, in the case of a foreign woman's child whose paternity is acknowledged by a foreigner who has obtained a permit to settle it should be noted that in accordance with **Article 64(1)(1) of the Act on Foreigners** a permit to settle shall be granted to a foreigner born on the territory of the Republic of Poland who is a minor child of a foreigner who has a permit to settle.

If abuse is found it should be noted that a permit to settle shall be refused to a foreigner who fails to fulfil the requirements referred to in Article 64(1), pursuant to **Article 66(1)(1) and (6) of the aforementioned Act**; who submitted an application or enclosed documents containing false personal data or false information during the proceeding on the granting of the permit to settle, or who gave false testimony or withheld the truth or counterfeited or forged a document which he/she intended to use or used as an authentic document. In the said situations a permit to settle already granted to a foreigner shall be revoked pursuant to **Article 68(1)(1a) and (2) of the aforementioned Act**.

Besides, a permit for tolerated stay on the territory of Poland is refused to the false father of the child for lack of grounds (see point 2.4 – a permit for tolerated stay).

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- criminal liability

The false father and the child's mother risk to be legally liable under **Article 233 of the Penal Code, Article 264a of the aforementioned Act**. Besides, in the case of false statements submitted to establish the child's paternity, the provisions of **Article 272 and 273 of the Penal Code** stating that obtaining the attestation of an untruth under false pretences from an official or other person entitled to issue the document is punishable by imprisonment of up to 3 years, may apply. The use of such documents is punishable by a fine, restriction of freedom or imprisonment of up to 2 years.

2. | A mobile EU national reunifies with a third-country national

- the consequences under the national migration provisions

Pursuant to **Article 31 (1) of the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members**, he/she is refused a residence card of an EU citizen's family member (as he/she is not a family member of an UE citizen). Pursuant to the provisions of **Article 36(1)(2) and (4)** an issued residence card of an EU citizen's family member shall be revoked (if it has been issued based on counterfeited or forged documents or false information, or if the family member fails to fulfil the conditions of residence set out in the Act).

On the other hand, in the case of ascertainment of the right of permanent residence on the territory of Poland, pursuant to **Article 56(1)(1) of the aforementioned Act** a permanent residence card of an EU citizen's family member is refused if the conditions of permanent residence set out in the Act have not been met. Finally, pursuant to Article 60(2)(1) of the aforementioned Act a permanent residence card of an EU citizen's family member shall be revoked if it has been issued based on counterfeited or forged documents or false information.

- criminal liability – as above.

3. | A non-mobile EU citizen reunifies with a third-country national where the EU citizenship gives rise to the right to reside for the third-country national family member on the basis of CJEU jurisprudence

- the consequences under the national migration provisions

The false father of the child is refused a permit for tolerated stay on the territory of Poland for lack of grounds (see point 2.4 – a permit for tolerated stay).

4. | A non-mobile EU citizen who for example resides in his/her country of birth reunifies with a third-country national

- the consequences under the national migration provisions when a foreigner claims to be the father of a child who is a Polish citizen

Pursuant to **Article 57(1) and (6) of the Act on Foreigners** a residence permit for a fixed period is refused to the foreigner as he fails to fulfil the statutory requirements or because during the proceeding on the granting of the residence permit for a fixed period he submitted an application or enclosed documents containing false personal data or false information or has given false testimony or concealed the truth or counterfeited or forged a document which he intended to use or used as an authentic document.

Pursuant to **Article 58(1)(2) of the aforementioned Act**: a residence permit for a fixed period granted to a foreigner shall be revoked if at least one of the situations referred to in Article 57(1)(2) or (3)–(9) has occurred.

Besides, the false father of the child is refused a permit for tolerated stay on the territory of Poland for lack of grounds (see point 2.4 – a permit for tolerated stay).

- the consequences under the national migration provisions when a Polish citizen falsely claims to be the father of a child who is a third-country national

Pursuant to **Article 64(1)(4) of the Act on Foreigners** a permit to settle shall be granted to a foreigner who is a Polish citizen's child and remains under his parental authority. In the case of false paternity the provisions of **Article 66(1)(1) and (6) of the aforementioned Act** concerning the permit refusal and **Article 68(1)(1a) and (2) of the aforementioned Act** concerning the revocation of a permit to settle shall apply respectively.

In the case of the child's mother the provision on the refusal of residence permits for a fixed period pursuant to **Article 57(1)(1) and (6) of the aforementioned Act** shall apply.

Besides, in the case of third-country nationals the provision on the refusal of a permit for tolerated stay on the territory of Poland for lack of grounds may apply (see point 2.4 – a permit for tolerated stay).

- criminal liability

The false father and the child's mother may risk to be legally liable under **Article 233 of the Penal Code, Article 264a, 272 and 273 of the aforementioned Act**.

3.8. Right to appeal for people accused of an abuse/unwarranted use of a family reunion ‘path’

Pursuant to **Article 127 of the Code of Administrative Procedure** a party dissatisfied with a decision may bring an appeal against the decision to the authority of one further instance.

The decision of the first instance authority, i.e. of the Voivode competent with respect to the foreigner’s place of residence in the proceedings for legalisation of stay and the right of residence of foreigners on the territory of Poland, may be appealed against to the Head of the Office for Foreigners.

3.9. Examples of transnational cooperation

In principle transnational cooperation is based on the cooperation with the consulates of the foreigners’ countries of origin (especially when problems with establishing the identity of the foreigners occur) and through SIRENE Bureaux of National Police Headquarters if the personal data of a foreigner – the spouse of a Polish citizen – are in SIS records.

Operation and investigation division of the Border Guard cooperates at the international level in criminal intelligence exchange under bilateral and multilateral agreements to which the Republic of Poland is a party in the field of combating organised crime.

The Office for Foreigners indicated the cooperation with the authorities of the United Kingdom when a marriage of convenience of a British citizen to a Ghana national was suspected. Besides, the voivodeship offices have emphasised the importance of readmission agreements.

3.10. Reasons and justifications indicated by the parties concerned. Main causes and factors of abuses

Marriages of convenience

Despite its fairly good economic situation, Poland is perceived by many foreigners as just a transit country. The right of residence (the residence card) obtained in Poland

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allows a foreigner to move freely within the territory of Schengen countries. The main factor which contributes to abuse is the possibility to obtain a residence permit on the grounds of a marriage to a Polish citizen due to fairly liberal provisions, which for example do not require right of authorised residence granted earlier, and the fact that the spouse of a Polish citizen may work on the territory of the Republic of Poland without work permits.

Marriage is one of the main reasons behind application for residence in Poland by foreigners (apart from employment, studying and self-employment).

Foreigners believe that a marriage of convenience will allow them to obtain quickly a residence permit for a fixed period of time or a permit to settle, and then the Polish citizenship. This is also a way to avoid expulsion, especially when the foreigner's personal data were listed in the register of undesirable foreigners and the foreigner entered Poland against the law under altered personal data. Besides, the legalisation of the stay in Poland by way of an abuse of the procedure facilitating family reunion by one of the third-country nationals eventually leads to (frequently successful) attempts at legalising the stay by other family members (for example by the actual life partner who is a national of the same country of origin reunifying with the foreigner who initiated the whole illpractice after divorcing from a Polish citizen).

Actually, a marriage of convenience does not lead to any serious legal consequences. Besides, it is a difficult and time-consuming task to find whether it was a marriage of convenience or not. In addition, even if it is proven that a foreigner entered into a marriage of convenience, a decision to expel him/her from Poland cannot be issued. Neither the above is a significant obstacle to legalise one's stay in Poland on another legal basis, such as employment.

It seems that behind marriages of convenience of the Polish women there are both emotional and economic reasons. As for the former it cannot be pronounced whether a given marriage has actually been one of convenience as the foreigner is careful to maintain an appearance of a regular marriage to obtain a residence permit. As for the latter, the detection rate of the illpractice is higher due to the frequent involvement of organised criminal groups persuading Polish citizens into entering into a marriage of convenience in exchange for pecuniary benefit. The economic situation is a favourable circumstance as some of the people decide to enter into a marriage of convenience because of financial difficulties, unemployment, etc.

False declarations of paternity

False declarations of paternity are even less detectable. As in the previous section, the practice gains popularity for almost lack of punishment. A false declaration of paternity frequently results from a marriage of convenience.

When searching for answers to the question of the reasons behind one's involvement in the above practice, two situations should be differentiated:

- a) a third-country national acknowledging his paternity of a child who is a Polish/EU citizen;
- b) a Polish/EU citizen acknowledging his paternity of a child who is a third-country national.

In the first situation a foreigner residing in Poland without authorisation can obtain a permit for tolerated stay if he acknowledges his paternity of a Polish citizen's child or of a legally residing child of a third-country national. The right is granted for an indefinite period of time and allows the foreigner to work without the work permits. A foreigners holding a tolerated stay card and a valid travel document is entitled to enter and reside on the territory of Schengen countries. A foreigner falsely claiming to be the father of a child who is a Polish citizen may also be motivated by his/her desire to avoid expulsion and to legitimise his/her stay on the grounds of family ties with a Polish citizen.

In the second situation information collected shows that the citizens of the Republic of Poland tend to acknowledge someone else's children for financial gains. In this case those involved are most frequently people without permanent place of residence, unemployed and with a criminal record. Less frequently, the aim of the acknowledgement of somebody else's child is to 'help' for example the child's mother to legalise her stay. It is worth emphasising that if a Polish citizen acknowledges his paternity of a child (a third-country national) within one year from the day in which the child was born, the child acquires Polish citizenship. However, if the acknowledgement occurs after one year from the day on which the child was born, the parent (the Polish citizen) may apply for granting to the child a permit to settle provided that the child remains under his de facto parental authority (Article 64(1)(4) of the Act on Foreigners).

A false declaration of paternity frequently also results from a marriage of convenience.

4

Available statistics, other sources of information, tendencies

4.1. Main/available statistics, sources of information

During the work on this report it was impossible to establish reliable data directly indicating the number of abuses detected (marriages of convenience and false declarations of paternity) at the national level.

The scale of the phenomenon can be illustrated indirectly by the statistics of the Office for Foreigners and of the voivodeship offices concerning the number of foreigners who apply for residence permits for a fixed period on the grounds of family reunion, the number of foreigners who have obtained a permit and the number of foreigners whose applications have been rejected. For the purposes of this report, the data have been grouped according to the legal basis of applying for granting a permit, the applicants' sex and citizenship. They cover the period 2009 –2011 (see the Annex).

The data collected by the Border Guard are also a valuable source of information. The study entitled 'The institution of marriage as a means of legalising foreigners' stay on the EU/Schengen territory' [„Instytucja małżeństwa jako środek legalizacji pobytu cudzoziemców na terytorium UE/Schengen”], apart from the data of the Office for Foreigners on the legalisation of foreigners' stay, also contains data on the opinions of the Border Guard for the purpose of administrative proceedings for the above permits for **2009 and 2010**. In 2009 there were 3631 opinions, whereas in 2010 there were 5090 opinions issued. Intelligence gathering activities of the Border Guards allowed to detect **128 cases that might have been proofs of marriages of convenience** (52 in 2009 and 76 in 2010). This category includes preparatory proceedings under which the suspects were presented with the charges for activities falling into the scope of a given illpractice (i.e. set out in the *Penal Code inter alia* in Article 258 (an organised criminal group and association), Article 264a (enabling, facilitating a stay on the territory of the Republic of Poland), Article 264(2) (crossing the state border by resort to violence, threat, deceit or in cooperation with third parties), Article 272 (obtaining the attestation of an untruth under false pretences), and Article 273 (the use of the attestation of an untruth). It is worth noticing that, as pointed out in the a.m. analysis, the scale of the practicing marriages of convenience to legalise a stay on the EU/Schengen territory should not be seen only through statistics because there are many cases in which, upon obtaining information from register offices preceding the marriage of foreigners to Polish citizens, the Border Guard officers undertook actions to verify the legality of a stay to prevent a likely marriage of convenience and to expel the above mentioned persons from the territory of Poland.

4.2. Detected cases of marriages of convenience and false declarations of paternity

As noticed in one of the voivodship offices, lack of an established method to describe the issue of entering into/occurrence of/proving marriages of convenience and the way the data are collected make it impossible to give a precise answer to the question. However, it can be ascertained that in the group of cases on the granting of residence permits on the grounds of a marriage to a citizen of the Republic of Poland examined by the above mentioned office, a marriage of convenience may occur in approximately 10% of cases per year. It was also said that based on the available data it can be assumed that each year the scope of the phenomenon is growing.

It is significant that the same question was answered in differently by the representatives of specified voivodship offices (see the quotations below):

‘Negative decisions issued by the Voivode (...) on the grounds that the marriages have been entered into out of convenience: 3 in 2009, 26 in 2010 and 29 in 2011.’

‘The complexity of the proceedings prevents from presenting reliable data on foreigners settlement. It can be deemed that annually there are 3 negative decisions on the average.’

‘In the case of EU citizens in the last 3 years there was one case of a marriage of convenience of a Lithuanian citizen to a national of the People’s Republic of China’.

‘According to the available data, in 2010 the proceedings before the Voivode (...) on the granting of residence permits revealed 2 cases in which the declared reason was a marriage of convenience (sic!), while in 2011 there were 3 such cases. All the cases fell under the fourth scenario.’

‘In 2011 r. the Voivode (...) carried out 18 proceedings pursuant to the Act on Foreigners where the evidence indicated that the marriage had been entered into or existed to circumvent the law. These were the cases on the residence permit for a fixed period, the permit to settle as well as on the removal from the country. Due to the evidence-related problems mentioned before, not all the cases were concluded with a decision that a given marriage constituted a marriage of convenience.’

‘During the last 2 years the Voivode (...) refused to grant permits legalising a stay to about 15 spouses of the citizens of the Republic of Poland, who were mainly the citizens of Vietnam and Armenia.’

‘Negative decisions with a refusal of the residence permits to a foreigner married to a Polish citizen or to a foreigner lawfully residing on the territory of Poland (pursuant to Article 57(1)(6)(a) – i.e. if he/she submitted an application or enclosed documents containing false personal data or false information) amounted to 6, in 2008, 1 in 2009, 1 in 2010 and 1 in 2011.’

From among 16 voivodeship offices only three provided data on the detected cases of false declarations of paternity (there were 5 such case revealed in 2008–2011).

Data related to the residence permits for fixed period of time provided by the Office for Foreigners have been presented in the Statistical Annex.

4.3. Information on the sources of data concerning the people involved in the practice of marriages of convenience and false declarations of paternity

Data on marriages of convenience and false declarations of paternity are fragmented, collected by individual national authorities listed in point 3.6 for the purposes of carrying out the proceedings. The most transparent ‘profile of perpetrators of the above mentioned abuses’ emerges from the analysis mentioned in point 4.1 carried out by the Border Guard on the basis of their own data.

The actions aimed at combating illegal migration, especially in its organised form, allow to detect cases of marriages of convenience involving the citizens of Nigeria, Vietnam, India, Egypt and Ukraine.

Apart from Polish citizens, the organisers of the illpractice of marriages of convenience were *inter alia* the citizens of Nigeria – those residing on the territory of the Republic of Poland for a long time, who have acquired a residence status (a residence permit for a fixed period, a permit to settle) and sometimes also Polish citizenship – as well as the citizens of India, Tunisia, Ukraine, Armenia and Congo.

Data on Polish citizens entering into marriages of convenience:

- **sex:** women (an overwhelming majority), men;
- **age:** 22 – 40 (most commonly in 22 – 27 age group), individual cases of people over 40;
- **domicile:** Dolnośląskie, Kujawsko – Pomorskie, Lubelskie, Lubuskie, Łódzkie, Małopolskie, Mazowieckie, Opolskie, Podlaskie, Pomorskie, Śląskie and Wielkopolskie Voivodeships;

4 Available statistics, other sources of information, tendencies

- **social background of a person entering into a marriage of convenience:** frequently a working class background, poor education (basic education/second stage of basic education), poor financial situation (frequently the unemployed), often a dysfunctional background with a correlation to criminal circles;
- **pecuniary benefit received in exchange for a marriage of convenience:** about 1,000–3,000 EUR (with individual cases of about 150–500 EUR).

Data on foreigners entering into marriages of convenience:

- **citizenship:** Nigeria, Ukraine, Egypt, Turkey, Tunisia, India, Armenia, Belarus;
- **(authentic/forged) identity and travel documents:** passports of the above mentioned countries (sometimes invalid); identity cards, residence cards as well as Polish and Schengen visas (including those obtained on the basis of an invitation issued upon request from the Polish spouse or a permit to work) – including both authentic documents and forgeries;
- **sex:** men (an overwhelming majority), women;
- **age:** 24 – 38 (individual cases of people over 38);
- **place of residence on the EU/Schengen/associated countries territory:** Poland, Belgium, France, Austria, Switzerland, Norway, Italy, Spain, the United Kingdom, Germany.

It should be emphasised that in the course of the Border Guard officers' official duties it was found that at least two organised criminal groups involved in the arrangement of marriages of convenience were active on the territory of Poland. In addition, further information indicates that there may be other active criminal groups of an organised basis involved in the criminal activity.

The Border Guard have also identified registry offices where marriages of convenience were concluded in 10 (out of 16) voivodeships. However, it was emphasised that the staff of the registry offices were not proven to have participated in the practice.

4.4. Information on the localisation of the abuses

Due to the difficulties in legalising a stay in Poland on the grounds of a marriage (of convenience) a tendency to legalise a stay on the territory of other EU/Schengen Member States (for example in Spain, Italy, etc.) has emerged. Foreigners, who for

different reasons failed to legalise their stay by marrying a citizen of the Republic of Poland, offered their 'fictitious wives' to go to for example Spain or Italy to register for residency on an EU Member State/Schengen territory and subsequently to apply for a residence permit for a fixed period resulting in the legalisation of the stay (the foreigners covered the costs of the flight to and from the EU Member State/Schengen territory often guaranteeing the spouse free holidays).

Another way of proceeding by the perpetrators wishing to legalise their stay on the EU/Schengen territory (for example in the United Kingdom, Denmark, Ireland, Italy, Spain, Austria) with the use of the institution of marriage was to offer Polish women to marry a foreigner outside the Republic of Poland, arguing that due to the form of the practice after they come back to Poland they would not have to register the marriage in the territorially competent registry office (and thus there would be no trace of the marriage of convenience) and, besides, they could visit the country where the marriage was to be concluded. Then (after entering into the marriage) foreigners applied for a residence permit for a fixed period in the given EU/Schengen Member State. If the procedure was successful, the foreigner applied for further rights of residence on the basis of the marriage to an EU citizen and divorced upon receiving a permit to settle.

There were also cases of foreigners who, upon failing to obtain a residence permit for a fixed period in the country of marriage, convinced the citizens of the Republic of Poland (usually in exchange for another sum of money) to register the marriage in territorially competent Polish registry office, and submitted again an application to the Voivode for a residence permit for a fixed period.

The involvement of the citizens of the Republic of Poland in marriages of convenience to foreigners coming from countries of high-risk migration was indicated for example by the United Kingdom. For example, in Scotland a criminal group offering to pay Polish people 3,000 pounds for marriages of convenience to citizens of Algeria, Afghanistan, Turkey or Pakistan was broken up. The organisers made 7,000 pound per person on this practice.

There were also cases of marriages of convenience with the involvement of the citizens of the Republic of Poland on the territory of third-countries, i.e. in India, Egypt, Tunisia, Morocco, Ukraine, Turkey, Nigeria.

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The possibility of marriages of convenience and false declarations of paternity is examined during every proceedings on the legalisation of a stay of a third-country national on the grounds of a marriage to a Polish citizen or to a foreigner legally residing on the territory of Poland.

An effective reduction of the scale of the undesirable phenomena may only be achieved in close cooperation among public authorities involved. This is related to the above mentioned issues resulting *inter alia* from the fact that the practice of marriages of convenience is organised by individuals and groups (Polish people, foreigners) notoriously violating the Polish legal order. This applies also to other irregularities such as for example the forgery of documents.

Currently, there are no provisions governing the cooperation and fast information exchange between voivodeships, heads of register offices and the Border Guard, though some voivodeship offices indicated the existence of such cooperation in practice.

It is true that the cooperation between the Border Guard and the staff of register offices should be strengthened as regards raising the awareness of the possible ways of using the institution of marriage for the purposes of the legalisation of the stay of illegal migrants.

At the current stage it is necessary to develop good practice based above all on the national legislation governing migration issues, which is currently being reformed.

It should be pointed out that the planned measures to address the issue of the abuse of the procedure for legalisation of stay by foreigners include the legislative works on a 'new' Act on Foreigners. Under the current law a voivode is required to verify whether the circumstances of a given case arouse a suspicion that a marriage has been entered into to circumvent the provisions on the granting of residence permits to foreigners only when the circumstances suggest a possible infringement of the law. The proposed legal regulations foresee that in the course of the proceedings on the granting of a temporary residence permit to a foreigner who is the spouse of a Polish citizen or of a foreigner applying for a temporary residence permit for the purpose of family reunion and in the course of the proceedings on the granting of a permanent residence permit to a foreigner who is the spouse of a Polish citizen, the authority will always be required to determine whether the marriage has been entered into to circumvent the provisions of the Act on Foreigners or whether the marriage exists in order for the foreigner to circumvent the provisions of the Act on Foreigners. Due to social changes there is a growing number of situations in which a marriage which is not a marriage of convenience does not constitute a basis for the foreigner's stay in

5 | Conclusions

the country as his/her spouse has been living outside Poland for a long time and the marriage is not functional and has not been legally dissolved.

As for the legalisation of the stay of third-country nationals who are the spouses of Polish citizens on the grounds of residence permits granted for a fixed period, it should be noted that pursuant to drafted provisions the permanent residence permit will be granted *inter alia* to a foreigner who has been married to a Polish citizen for at least 3 years before submitting the application and immediately preceding the application he/she has resided continually on the territory of the Republic of Poland for at least 3 years on the basis of temporary residence permit granted on the grounds of a marriage to a Polish citizen or on the grounds of obtaining refugee status or subsidiary forms of protection or humanitarian protection. In comparison to the existing provisions governing the granting of permits to settle to the spouses of Polish citizens, the period of residence of the foreigner on the grounds of a permit for a temporary residence immediately preceding the application for permanent residence permit will be extended.

Besides, the drafted provisions include a new reason for the revocation of a permanent residence permit, according to which it will be possible to revoke a permanent residence permit granted on the grounds of a marriage to a Polish citizen if the foreigner has divorced from his/her spouse within 3 years from obtaining the permit.

Findings made in the course of an administrative proceedings that a given marriage has been entered for the purpose of convenience do not result in its annulment by virtue of law. The findings of public administration bodies rarely translate into criminal charges especially against Polish citizens. The lack of effective enforcement of criminal law rules may lead to the assumption that the national authorities do not perceive the reprehensible nature of the practices which consequently are gaining popularity. Limiting or depriving the foreigners (and especially those residing in Poland without authorisation) of the rights resulting from a marriage with the citizens of EU Member States would reduce the potential of the occurrence of marriages of convenience.

In the course of collection of information for the purposes of this report, some interviewed respondents demanded an insertion of a provision setting out grounds for the annulment of such a marriage 'of convenience' onto the Family and Guardianship Code. Then, a court ruling on the annulment of the marriage would be a convenient basis for further decisions in an administrative case, and especially in a criminal case. In this case the body entitled to request the annulment of the marriage should be the Prosecutor. Consideration of an inclusion of the marriage of convenience into the

Penal Code as a self-contained crime and a definition in this area was also proposed. However, it seems that above mentioned ideas are controversial from the perspective of human rights, in particular a right to respect for family life.

In the course of collection of information for the purposes of this report, the respondents pointed out that the implementation of the provisions of Directive 2003/86/WE on the right to family reunification concerning the checks and inspections referred to in Article 16(4) thereof might be more effective if national regulations on the prevention of abuses are drafted and implemented, including for example the precise formulation in the national law of the procedure for revealing a fraud or a marriage of convenience; the extension of the scope of cooperation with the Border Guard in the course of an administrative proceedings on family reunion discussed above. It was also suggested that a revision of the Regulation of 24 December 2008 on the mode of the inspection of the premises performed by the Border Guard officers should be considered to delete the provision on the obligation to inform a foreigner of the planned measure. The requirement is met by delivering a notice. Due to the above provision the evidence tool in the form of ‘the inspection of the premises’ (which is potentially a very important evidence tool in the cases on marriages of convenience) is not used because a prior notice of the inspection of the premises to the foreigner in problematic cases eliminates the chance to establish the de facto state of the case.

In the context of false declarations of paternity the problem should be considered more closely as the current situation in this area encourages the development of pathological situations. The cases of false declarations of paternity are difficult to detect without the use of non-standard (under an administrative proceedings) means of proof such as an expert witness evidence in the area of DNA testing.

It should be underlined, that all abovementioned proposals have originated from the questionnaires filled in – for the purpose of this report – by the practitioners. However, taking into account the specific nature of family relationships and the right to privacy of each human being, a full implementation of them all may lead to a violation of some fundamental human rights. The scale of the abusing of the residence permits for the purpose of family reunion remains rather small and for this reason the far-reaching amendments to the national law are not required.

6 | Statistical Annex

Pursuant to **Article 55 (1) of the Act on Foreigners** the authority conducting proceedings for granting a residence permit for a fixed period to a foreigner married to a Polish citizen or to a foreigner residing on the territory of the Republic of Poland shall establish whether the marriage was not entered into in order for the foreigner to circumvent the provisions on granting the residence permit for a fixed period on the territory of the Republic of Poland, if the circumstances suggest that:

1. one of the spouses consented to a marriage for the purpose of financial gain, unless it is customary to do so in a given country or social group;
2. the spouses fail to fulfil legal obligations arising from entering into marriage;
3. the spouses do not live together;
4. the spouses have never met before their marriage;
5. the spouses do not speak a language that they both understand;
6. the spouses are not unanimous as for their personal data and other important information concerning them;
7. one of spouses or both of them have entered into marriages of convenience in the past.

According to the data originated from the Office for Foreigners, in the years 2009 – 2011 the number of negative decisions on granting the residence permit for a fixed period based on the provisions of article 55 was as follows:

NATIONALITY	Article 55 sec. 1 point 1			Article 55 sec. 1 point 2			Article 55 sec. 1 point 3			Article 55 sec. 1 point 4			Article 55 sec. 1 point 5			Article 55 sec. 1 point 6			Article 55 sec. 1 point 7		
	W	M	W+M	W	M	W+M	W	M	W+M	W	M	W+M	W	M	W+M	W	M	W+M	W	M	W+M
ARMENIA	-	-	-	-	-	-	1	1	1	-	-	-	-	-	-	-	1	1	-	-	-
GUINEA	-	-	-	-	-	-	1	1	1	-	-	-	-	-	-	-	1	1	-	-	-
NIGERIA	1	-	1	1	1	1	1	1	2	1	1	2	-	-	-	-	2	2	-	-	-
RUSSIA	-	-	-	-	-	-	1	1	1	-	-	-	-	-	-	1	-	1	-	-	-
UGANDA	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
UKRAINE	-	1	1	-	1	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-
2009 – TOTAL	1	1	2	1	1	2	4	6	1	1	2	2	-	-	-	1	4	5	-	-	-
ALGERIA	-	1	1	-	1	1	-	1	1	-	1	1	-	2	2	-	1	1	-	1	1
ARMENIA	-	-	-	-	1	1	-	2	2	-	-	-	-	-	-	-	2	2	-	-	-
BELARUS	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
GEORGIA	-	-	-	1	-	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-
INDIA	-	-	-	-	2	2	-	2	2	-	-	-	-	1	1	-	1	1	-	-	-
NIGERIA	-	-	-	-	1	1	-	1	1	-	-	-	-	-	-	-	1	1	-	-	-
RUSSIA	-	-	-	-	-	-	1	1	1	-	-	-	-	-	-	1	-	1	-	-	-
UKRAINE	-	1	1	1	1	1	2	2	2	1	1	1	-	-	-	2	-	2	-	-	-
VIETNAM	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-
2010 – TOTAL	1	2	3	2	5	7	4	6	10	1	2	3	-	3	3	5	8	-	1	1	1
ARMENIA	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-
CHINA	-	-	-	1	1	1	1	1	1	-	-	-	-	-	-	1	-	1	-	-	-
INDIA	-	-	-	-	1	1	-	1	1	-	-	-	-	-	-	-	1	1	-	-	-
MACEDONIA	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	1	1	-	-	-
MOLDOVA	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TUNISIA	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	1	1	-	-	-
TURKEY	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
UKRAINE	-	-	-	1	-	-	3	-	3	-	-	-	-	-	-	1	-	1	-	-	-
2011 – TOTAL	-	1	1	2	2	4	4	2	6	0	1	1	1	-	-	2	4	6	-	-	-

Pursuant to **Article 57 (1) (4) of the Act on Foreigners** an alien shall be refused the residence permit for a fixed period, if he/she applies for the permit on the grounds of a marriage concluded with a Polish citizen or an alien residing on the territory of the Republic of Poland if the marriage has been concluded for the purpose of abuse by an applicant the provisions on granting the residence permit for a fixed period.

In the years 2009 – 2011 the number of negative decisions on granting the residence permit for a fixed period issued to the foreigners on the basis of **Article 57 (1) (4)** was as follows:

NATIONALITY	2009			2010			2011			2009-2011 TOTAL
	W	M	TOTAL	W	M	TOTAL	W	M	TOTAL	
AFGANISTAN		1	1							1
ALGERIA	2	2	4		4	4		2	2	8
ARMENIA	1	13	14	13	20	33	8	15	23	70
STATELESS		1	1							1
BANGLADESH					2	2		2	2	4
BELARUS	1		1	7	1	8	4	1	5	14
BOLIVIA								1	1	1
BOŚNIA AND HERCEGOVINA		2	2							2
CHINA				1		1	1		1	2
EGYPT		4	4		2	2		5	5	11
GAMBIA		1	1							1
GEORGIA		1	1	2		2		3	3	6
GUINEA		1	1							1
INDIA		2	2		4	4		3	3	9
IRAQ								1	1	1
JORDAN								1	1	1
CAMEROON				1		1	1	1	2	3
CONGO							1		1	1
KOSOVO					2	2		1	1	3
LEBANON					2	2				2
MACEDONIA (FYROM)								1	1	1
MAROCCO		1	1		2	2		3	3	6
MOLDOVA					1	1				1
MONGOLIA				4		4	2		2	6
NIGERIA		53	53	3	26	29		6	6	88
PAKISTAN		3	3		2	2		3	3	8
PERU		1	1							1
RUSSIA	1	1	2	5	2	7	1	3	4	13
SENEGAL		1	1							1
SERBIA					2	2				2
USA		1	1							1
SRI LANKA								1	1	1
SYRIA					1	1				1
TUNISIA		3	3		3	3		9	9	15
TURKEY		4	4		10	10		6	6	20
UKRAINE		8	8	20	6	26	21	7	28	62
VIETNAM		9	9	13	9	22	6	8	14	45
TOTAL	5	113	118	69	101	170	45	83	128	416

Below data concerning the number of residence permits for a fixed period (applications submitted and the decisions issued) in the administrative proceedings related to family members – a spouse of a Polish citizen (**Article 53 (1)(6) of the Act on Foreigners**) in 2009-2011 was presented.

2009:

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
AFGANISTHAN		13	13	1	12	13		1	1
ALBANIA	5	87	92	3	81	84		2	2
ALGERIA	5	111	116	4	101	105		1	1
ANGOLA	2	1	3	2	3	5			
ARGENTINA	5	9	14	4	7	11			
ARMENIA	93	161	254	75	127	202	2	3	5
AUSTRALIA	2	15	17	5	17	22			
AZERBAIJAN	6	3	9	5	3	8			
BANGLADESH	1	21	22	1	21	22			
BENIN		2	2		1	1			
BELARUS	394	70	464	378	60	438	4		4
BOLIVIA	1	4	5	1	3	4		1	1
BOŠNIA AND HERCEGOVINA	1	13	14	1	9	10		1	1
BRASIL	20	41	61	20	41	61			
BURKINA FASO		1	1		3	3			
CANADA	12	26	38	10	23	33		1	1
CAMBODIA	1		1						
CAMEROON	2	35	37	2	33	35			
CHILE	2	6	8	2	8	10			
CHINA	22	15	37	27	15	42			
COLUMBIA	13	10	23						
CONGO	3	8	11	3	12	15			
COSTARICA	1	1	2	1		1			
CROATIA	3	15	18	4	16	20			
CUBA	10	10	20	12	8	20			
DEMOCRATIC REPUBLIC OF CONGO		3	3		4	4			
DOMINICA		1	1		1	1			
DOMINICANA				4	2	6			
EGYPT	2	205	207	3	196	199		3	3
EQUADOR	5	14	19	3	14	17	1		1
ETHIOPIA	1	2	3	2	2	4			
GAMBIA	1	5	6		4	4			
GHANA	1	19	20	1	15	16			
GEORGIA	9	19	28	7	19	26			
GUINEA		14	14	1	11	12			
GUATEMALA		1	1		2	2			
HAITI		2	2		1	1			
HONDURAS	1		1	1		1			
HONGKONG	1		1	1		1			
INDIA	3	149	152	6	138	144		1	1
INDONESIA	7	4	11	6	4	10			

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
IRAQ	3	24	27	5	26	31			
IRAN	1	20	21	2	17	19			
ISRAEL	5	13	18	3	16	19			
IVORY COST		1	1		1	1			
JAMAICA	2	2	4	2		2			
JAPAN	21	15	36	25	14	39			
YEMEN	1	6	7	1	7	8			
JORDAN	1	16	17	1	11	12		1	1
KAZAKHSTAN	16	9	25	17	7	24			
KENIA	1	6	7	4	8	12			
KYRGYSTAN	5	2	7						
KOSOVO	1	28	29	1	17	18		4	4
KUWAIT		1	1		1	1			
LAOS	1	1	2	1		1			
LEBANON	1	22	23	1	20	21		1	1
LIBERIA		8	8		1	1			
LIBYA					10	10			
MACEDONIA (FYROM)	4	15	19	3	11	14			
MADAGASCAR	1	2	3	1	4	5			
MALAWI	1		1						
MALESIA	4	2	6	1	4	5			
MALI	1	3	4	1	6	7			
MAROCCO	4	99	103	7	93	100		2	2
MAURETANIA		4	4		4	4			
MAURITIUS	4	2	6	4	2	6			
MEXICO	17	53	70	22	41	63			
MOLDOVA	28	27	55	31	28	59			
MONGOLIA	24	7	31	16	6	22			
MONTENEGRO	1	1	2	1	4	5		1	1
MYANMAR	1		1	1		1			
NEPAL	4	11	15	3	13	16			
NIGER		2	2						
NIGERIA	8	349	357	2	259	261		8	8
NEW ZELAND		6	6		4	4		1	1
PAKISTAN	1	61	62	1	52	53		2	2
PALESTINA	2	20	22	2	20	22			
PANAMA	1	1	2		2	2			
PAPUA NEW GUINEA	1		1	1		1			
PARAGUAY	2	3	5	1	3	4			
PERU	8	26	34	8	23	31		2	2
PHILIPPINES	33	3	36	31	4	35			
RUSSIAN FEDERATION	275	82	357	275	75	350	5	2	7
SAUDI ARABIA		2	2						
SENEGAL	2	9	11	3	11	14		1	1
SERBIA	6	41	47	7	37	44			
SIERRA LEONE		2	2		3	3			
SINGAPORE	2	2	4	1	3	4			
SOMALIA									
SOUTH AFRICA	6	30	36	5	26	31			

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
SOUTH KOREA	7	2	9	6	3	9			
SRI LANKA					7	7			
STATELESS	1	8	9	1	7	8			
USA	36	192	228	32	190	222		1	1
SUDAN		4	4		5	5			
SYRIA	7	33	40	7	31	38			
TADJIKISTAN	3		3	2		2			
THAILAND	16	2	18	17	2	19			
TAIWAN	4	2	6	4	2	6			
TANZANIA	2	9	11	3	7	10		1	1
TOGO					4	4			
TRYNIDAD AND TOBAGO	1	1	2	1		1		1	1
TUNISIA	4	208	212	5	216	221		1	1
TURKEY	6	221	227	5	203	208		3	3
TURKMENISTAN	3		3	4		4			
UGANDA		1	1		4	4		1	1
UKRAINE	1764	376	2140	1723	363	2086	13	6	19
URUGWAY	1	2	3	2	1	3			
UZBEKISTAN	10		10	12		12	1		1
VENEZUELA	5	11	16	5	6	11			
ZAMBIA	3	1	4	3	2	5			
ZIMBABWE	1		1	2		2			
VIETNAM	29	76	105	16	73	89		4	4
REPUBLIC OF CAPE VERDE		1	1		1	1			
TOTAL	3044	3322	6366	2950	3055	5605	26	58	84

2010:

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
AFGHANISTAN		11	11		11	11		1	1
ALBANIA	1	66	67	3	63	66		5	5
ALGERIA	2	127	129	5	107	112		1	1
ANGOLA				1		1			
ARGENTINA	1	8	9	2	10	12			
ARMENIA	72	134	206	61	104	165	2	3	5
AUSTRALIA	7	20	27	4	18	22			
AZERBAIJAN	5	8	13	3	6	9			
BANGLADESH		34	34		23	23		1	1
BELARUS	332	74	406	322	62	384	6	2	8
BOLIVIA	1	4	5	1	4	5			
BOŠNIA AND HERCEGOVINA	1	11	12	1	9	10		1	1
BRASIL	21	32	63	28	30	58			
BURKINA FASO		2	2		2	2			
CANADA	13	26	39	11	25	36		2	2
CAMBODIA	1		1	1		1			
CAMEROON	4	33	37	2	23	25			
CHILE	2	11	13	2	9	11			
CHINA	34	19	53	30	17	47			

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
CONGO	2	9	11	2	11	13			
COSTARICA	1	1	2		4	4			
CROATIA	4	29	33	3	27	30			
CUBA	6	12	18	5	13	18		1	1
DEMOCRATIC REPUBLIC OF CONGO		3	3		2	2			
DOMINICAN REPUBLIC	1	5	6	1	6	7			
EGYPT	2	268	270	1	234	235			
ECUADOR	5	6	11	3	5	8			
ETHIOPIA	1	6	7	1	4	5			
GAMBIA		6	6	1	7	8			
GHANA	3	10	13	3	10	13			
GEORGIA	8	22	30	5	15	20			
GUINEA		11	11		7	7			
GUATEMALA	2	3	5	2	4	6			
HAITI		1	1		1	1			
HONDURAS	1		1	1		1			
INDIA	9	184	193	5	162	167		7	7
INDONESIA	9	8	17	9	9	18	2		2
IRAQ	5	22	27	5	16	21		1	1
IRAN	4	13	17	4	15	19			
ISRAEL	1	6	7	2	6	8			
IVORY COAST	1		1						
JAMAICA	1	2	3	1	1	2		1	1
JAPAN	32	10	42	26	12	38			
YEMEN	1	5	6		8	8			
JORDAN		15	15	1	16	17		1	1
KAZAKHSTAN	16	5	21	18	5	23			
KENYA	5	10	15	2	6	8			
KOSOVO	1	28	29	1	23	24		2	2
KUWAIT		1	1		1	1			
LEBANON	3	24	27	3	16	19			
LIBERIA		1	1	1	1	2			
LIBYA		6	6		5	5		1	1
MACEDONIA (FYROM)	4	14	18	4	13	17		1	1
MADAGASCAR		1	1						
MALESIA	1	1	2	3		3			
MALI		1	1		1	1			
MAROCCO	8	96	104	5	88	93		2	2
MAURITANIA		3	3		2	2			
MAURITIUS	1	4	5		4	4			
MEXICO	16	46	62	16	49	65			
MOLDOVA	36	23	59	35	20	55			
MONGOLIA	30	5	35	21	5	26		1	1
MONTENEGRO		1	1		2	2			
NEPAL	3	18	21	4	13	17			
NIGER									
NIGERIA	2	293	295	1	261	262	2	13	15
NEW ZELAND	4	7	11	1	7	8			

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
NICARAGUA		2	2		1	1			
PAKISTAN		73	73		67	67		2	2
PALESTINA	2	21	23	2	10	12			
PANAMA				1		1			
PARAGUAY		1	1	1	1	2			
PERU	3	15	18	4	13	17		1	1
PHILIPPINES	43	3	46	32	3	35			
RUSSIAN FEDERATION	290	72	362	265	67	332	6	1	7
RWANDA		1	1		1	1			
SAINT VINCENT AND THE GRENADINES		1	1						
SALVADOR	2		2	2		2			
SAUDI ARABIA					1	1			
SENEGAL	4	7	11	4	9	13			
SERBIA	5	34	39	2	31	33		3	3
SIERRA LEONE	2	6	8	2	4	6			
SINGAPORE	1	1	2		1	1			
SOMALIA		1	1		1	1			
SOUTH AFRICA	7	29	36	6	26	32			
SOUTH KOREA	10	8	18	10	6	16			
SRI LANKA	2	4	6	2	2	4			
STATELESS	4	7	11	3	5	8			
SUDAN		2	2		2	2			
SYRIA	8	57	65	9	38	47		2	2
TAJKISTAN				1		1			
THAILAND	29		29	30		30			
TAIWAN	3		3	4		4			
TANZANIA	3	7	10	2	7	9		1	1
TOGO		7	7		4	4			
TRYNIDAD AND TOBAGO	1		1	2	1	3			
TUNISIA	6	247	253	5	224	229		3	3
TURKEY	7	238	245	4	223	227		7	7
TURKMENISTAN	4		4	4		4			
UGANDA		3	3		3	3			
UKRAINE	1620	347	1967	1568	303	1871	22	12	34
UNKNOWN		1	1						
URUGWAY	1		1	1	2	3			
USA	38	187	225	42	184	226		2	2
UZBEKISTAN	9	3	12	12	3	15			
VENEZUELA	11	10	21	9	12	21			
VIETNAM	36	48	84	28	39	67	2	1	3
ZAMBIA	1	2	3	1	4	5			
ZIMBABWE	3	1	4	3		3		1	1
TOTAL	2904	3324	6228	2752	2949	5701	44	90	134

2011:

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
AFGHANISTAN		5	5	1	5	6			
ALBANIA	3	51	54	3	51	54		4	4
ALGERIA	3	108	111	1	108	109		3	3
ANGOLA	1	3	4		3	3			
ARGENTINA	5	5	10	3	5	8		1	1
ARMENIA	65	93	158	58	93	151		1	1
AUSTRALIA	8	20	28	8	20	28			
AZERBAIJAN	3	1	4	4	1	5			
BANGLADESH	1	29	30	1	29	30		1	1
BELARUS	260	53	313	248	53	301	3	1	4
BOLIVIA		2	2		2	2			
BOŠNIA AND HERCEGOVINA		4	4		4	4		1	1
BRASIL	19	30	49	19	30	49			
BURKINA FASO		4	4		4	4			
CANADA	8	26	34	11	26	37			
CAMBODIA	1		1						
CAMEROON	1	34	35	1	34	35		2	2
CHILE	2	10	12	3	10	13			
CHINA	43	11	54	37	11	48	1		1
COLUMBIA	14	10	24	12	10	22	1		1
CONGO	2	11	13	2	11	13			
COSTARICA	1	4	5	2	4	6			
CROATIA	3	17	20	3	17	20			
CUBA	8	13	21	5	13	18	1		1
DEMOCRATIC REPUBLIC OF CONGO		1	1		1	1			
DOMINICAN REPUBLIC	6	2	8	7	2	9			
ECUADOR	2	6	8	4	6	10		1	1
EGYPT	5	248	253	5	248	253		3	3
ETHIOPIA	9	4	13	5	4	9			
GABON	1		1						
GAMBIA	1	4	5	1	4	5			
GEORGIA	9	25	34	9	25	34			
GHANA	3	20	23	3	20	23			
GUATEMALA	2	2	4	2	2	4			
GUINEA	2	7	9	2	7	9			
HONDURAS		1	1		1	1			
INDIA	8	167	175	7	167	174		3	3
INDONESIA	13	4	17	8	4	12			
IRAQ	6	20	26	4	20	24			
IRAN	2	12	14	2	12	14			
ISRAEL	4	14	18	2	14	16			
IVORY COAST	-	3	3						
JAMAICA	2	2	4	1	2	3			
JAPAN	28	17	45	31	17	48			
YEMEN	2	2	4	2	2	4			
JORDAN	3	27	30	5	27	32			

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
KAZAKHSTAN	15	2	17	13	2	15	1		1
KENYA	5	8	13	4	8	12			
KOSOVO	3	21	24	1	21	22		3	3
KUWAIT									
KYRGYSTAN	3		3	3		3			
LEBANON	1	18	19	1	18	19		2	2
LIBERIA	1		1	1		1			
LIBYA	1	18	19		18	19			
MACEDONIA (FYROM)	3	14	17	4	14	18		1	1
MADAGASCAR	1	1	2	1	1	2			
MALESIA	4	1	5	3	1	4			
MALI	1	2	3	2	2	4		3	3
MAROCCO	4	96	100	3	96	99			
MAURITANIA		3	3		3	3		1	1
MAURITIUS	5	8	13	2	8	10	1		1
MEXICO	21	49	70	19	49	68			
MOLDOVA	28	15	43	21	15	36			
MONGOLIA	16	11	27	18	11	29		1	1
MONTENEGRO		4	4		4	4			
MYAMAR	2		2	2		2			
NEPAL	2	16	18	3	16	19			
NIGER		1	1		1	1			
NIGERIA	5	218	223	4	218	222		8	8
NEW ZELAND		6	6		6	6			
NICARAGUA	1	1	2	1	1	2			
PAKISTAN	1	56	57	1	56	57			
PALESTINA	5	14	19	5	14	19			
PANAMA	1	1	2	1	1	2			
PARAGUAY									
PERU	6	13	19	6	13	19			
PHILIPPINES	41	3	44	39	3	42	1		1
RUSSIAN FEDERATION	258	64	322	246	64	307	4	1	5
RWANDA		1	1	1	1	2			
SAINT VINCENT AND THE GRENADINES		1	1		1	1			
SALVADOR	3	1	4	2	1	3			
SAUDI ARABIA		1	1		1	1			
SENEGAL	2	10	12	2	10	12			
SERBIA	5	25	30	3	25	28		2	2
SIERRA LEONE	1	3	4	1	3	4			
SINGAPORE	1	1	2	2	1	3			
SOMALIA		1	1		1	1			
SOUTH AFRICA	4	21	25	5	21	26			
SOUTH KOREA	6	6	12						
SRI LANKA	1	2	3	1	2	3			
STATELESS	4	14	18	2	14	16			
SUDAN	2	4	6	1	4	5			
SYRIA	6	41	47	7	41	48		1	1
TAIWAN	2	3	5	1	3	4			

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
TAJKISTAN	2	1	3	1	1	2			
TANZANIA	1	5	6	2	5	7			
THAILAND	28		28	21		21			
TOGO	1	5	6	1	5	6			
TRYNIDAD AND TOBAGO	1	2	3	1	2	3			
TUNISIA	6	250	256	4	250	254		6	6
TURKEY	3	251	254	4	251	255		3	3
TURKMENISTAN	4		4	3		3			
UGANDA	1	3	4	1	3	4			
UKRAINE	1390	266	1656	1322	266	1588	17	9	26
UNITED KINGDOM		1	1						
UNKNOWN		1	1		1	1			
URUGWAY	1	3	4	1	3	4			
USA	39	171	210	35	171	206	1		1
UZBEKISTAN	5	5	10	4	5	9			
YEMEN	2	2	4	2	2	4			
VENEZUELA	7	10	17	4	10	14			
VIETNAM	30	33	63	27	33	60		1	1
ZAMBIA	2		2	1		1			
ZIMBABWE	5		5	3		3	1		1
TOTAL	2557	2940	5497	2393	2939	5332	32	66	98

Below data concerning the number of residence permits for a fixed period (applications submitted and the decisions issued) in the administrative proceedings related to a family member of a foreigner (sponsor) intending to arrive on the territory of the Republic of Poland or residing on that territory (**Article 53 (1)(7) of above-mentioned Act**) was presented.

2009:

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
ALBANIA	1		1		1	1			
ANGOLA	2	2	4	2	1	3			
ARMENIA	57	42	99	92	61	153		1	1
AUSTRALIA	5	4	9	2	2	4			
AZERBAIJAN	5	3	8	8	1	9			
BELARUS	67	48	115	48	42	90			
BRASIL	1	1	2	3	1	4			
CANADA	1	1	2	2	3	5			
CHILE	2		2						
CHINA	49	14	63	30	6	36			
COLUMBIA				2		2			
CONGO	2		2						
CROATIA					3	3			
ECUADOR				1		1			
EGYPT	2	1	3						
ETHIOPIA				1	1	2			
GEORGIA	4	3	7	7	3	10			

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
INDIA	43	21	64	52	20	72			
IRAQ	4	2	6	7	6	13			
IRAN	1	2	3						
ISRAEL	10	3	13	5	3	8			
JAPAN	22	9	31	17	8	25			
YEMEN				3	3	6			
JORDAN	1		1	1		1			
KAZAKHSTAN	9		9	3		3			
KYRGYSTAN	2	2	4		1	1			
LAOS		1	1						
LEBANON	1	2	3	1		1			
LIBYA		1	1						
MALESIA				1	2	3			
MALI	2		2						
MAROCCO	1		1		1	1			
MEXICO	2		2						
MOLDOVA	5	3	8	4	4	8			
MONGOLIA	17	17	34	15	20	35			
MONTENEGRO	1		1						
NEPAL	3	1	4	3	1	4			
NIGERIA	3	2	5	1	5	6			
NORTH KOREA									
PAKISTAN		1	1		1	1			
PALESTINA	2		2	3	1	4			
PHILIPPINES	7	2	9	7	2	9			
RUSSIAN FEDERATION	65	38	103	61	48	109			
SERBIA	3	1	4	4	1	5			
SOMALIA	3		3	2	2	4			
SOUTH AFRICA	3		3	3		3			
SOUTH KOREA	51	26	77	35	20	55	1		1
STATELESS	1		1	-	1	1			
SUDAN	1	1	2	1		1			
SYRIA	3	3	6	3	2	5			
TAIWAN	2		2	2		2			
TAJIKISTAN					1	1			
TUNISIA	1		1	2	1	3			
TURKEY	54	18	72	41	22	63	1		1
TURKMENISTAN	1		1						
UKRAINE	380	264	644	435	286	721	2		2
URUGWAY		2	2						
USA	18	16	34	39	20	59			
UZBEKISTAN		2	2	3	1	4			
VENEZUELA	1	1	2						
VIETNAM	216	149	365	131	94	225	4	1	5
ZIMBABWE	2	1	3	3	2	5			
TOTAL	1141	709	1850	1087	704	1791	8	3	11

2010:

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
ALBANIA	1	1	2	1	2	3			
ALGERIA				1		1			
ARMENIA	63	44	107	87	61	148	1	1	2
AUSTRALIA	8	5	13	1	1	2			
AZERBAIJAN	12	5	17	6	4	10		1	1
BANGLADESH	1		1						
BELARUS	76	54	130	74	58	132			
BOŠNIA AND HERCEGOVINA	1	2	3	1	1	2			
BRASIL		1	1	3		3			
CANADA				2	1	3			
CHILE	2		2	1		1			
CHINA	44	20	64	31	13	44			
COLUMBIA	1	1	2						
CROATIA		1	1	2		2			
ECUADOR	1		1	1		1			
EGYPT					1	1			
GEORGIA	7	1	8	2		2			
GHANA	2	1	3	1		1			
INDIA	62	28	90	73	29	102	1		1
IRAQ	2		2	3	4	7			
IRAN				1	1	2			
ISRAEL	10	6	16	14	7	21			
JAPAN	17	5	22	17	6	23			
YEMEN	11	3	14	6	1	7			
JORDAN	4		4	1		1			
KAZAKHSTAN	7	1	8	7	3	10			
KYRGYSTAN	1	1	2	1		1			
LEBANON	3		3	2		2			
LIBYA	2	3	5		1	1			
MACEDONIA (FYROM)	3	1	4	3	1	4			
MALI	2		2	1		1			
MEXICO	1	2	3	1	2	3			
MOLDOVA	7	5	12	9	5	14			
MONGOLIA	22	23	45	27	22	49			
MONTENEGRO	3		3	1		1			
NEPAL	4	2	6	4		4			
NIGERIA	7	4	11	6	2	8			
NORTH KOREA									
PAKISTAN	1	1	2	1	1	2			
PALESTINA	5	1	6	7	1	8			
PERU	1		1						
PHILIPPINES	3	1	4	6	3	9			
RUSSIAN FEDERATION	84	54	138	76	49	125			
SAUDI ARABIA	1			1					
SERBIA	1	1	2	7	1	8			
SOMALIA	5		5	3	3				
SOUTH AFRICA	3	2	5		2	2			

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
SOUTH KOREA	93	44	137	88	44	132	3		3
SRI LANKA	1		1	2	1	3			
STATELESS		1	1						
SUDAN	2		2	1		1			
SYRIA	9	2	11	10	2	12			
TAIWAN	2		2	1		1			
THAILAND	1		1	2		2			
TUNISIA	3	2	5	5	1	6			
TURKEY	54	11	65	59	10	69	1		1
UKRAINE	431	286	717	414	298	712		1	1
USA	27	20	47	28	17	45			
UZBEKISTAN	1	1	2		1	1			
VIETNAM	200	137	337	130	117	247	2		2
ZIMBABWE	3	3	6	2	2	4			
TOTAL	1321	787	2108	1236	777	2013	8	3	11

2011:

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
AFGHANISTAN	4	1	5	2	1	3			
ALBANIA		1	1		1	1			
ALGERIA		1	1	3	1	4			
ANGOLA	2		2	2		2			
ARGENTINA									
ARMENIA	82	51	133	98	51	149	1	1	2
AUSTRALIA		1	1	3	1	4			
AZERBAIJAN	8	3	11	4	3	7			
BANGLADESH									
BELARUS	75	45	120	58	45	103		1	1
BOLIVIA									
BOŠNIA AND HERCEGOVINA	2	2	4	3	2	5			
BRASIL				4		4			
BURKINA FASO									
CANADA	3	2	5	3	2	5			
CAMBODIA									
CAMEROON									
CHILE									
CHINA	94	48	142	50	48	98			
COLUMBIA									
CONGO									
COSTARICA									
CROATIA	2	3	5	2	3	5			
CUBA									
DEMOCRATIC REPUBLIC OF CONGO									
DOMINICAN REPUBLIC									
ECUADOR									
EGYPT	1	2	3	1	2	3			
ETHIOPIA									

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
GABON									
GAMBIA									
GEORGIA	2	4	6	4	4	8			
GHANA	1		1	1		1			
GUATEMALA									
GUINEA									
HONGKONG		1	1		1	1			
INDIA	54	24	78	74	24	98			
INDONESIA									
IRAQ	7	6	13	5	6	11			
IRAN	1		1						
ISRAEL	13	7	20	4	7	11			
IVORY COAST									
JAMAICA									
JAPAN	31	14	45	27	14	41			
YEMEN	6		6	6		6			
JORDAN				4		4			
KAZAKHSTAN	5		5	5		5			
KENYA	1		1	1		1			
KOSOVO									
KUWAIT									
KYRGYSTAN	1	2	3		2	2			
LEBANON	4		4	2		2			
LIBERIA									
LIBYA	5	4	9	4	4	8			
MACEDONIA (FYROM)	1	4	5		4	4			
MADAGASCAR									
MALESIA									
MALI	6		6	1		1			
MAROCCO									
MAURITANIA									
MAURITIUS									
MEXICO	2	4	6	2	4	6			
MOLDOVA	11	10	21	12	10	22			
MONGOLIA	20	18	38	12	18	30	1		1
MONTENEGRO	1		1						
MYAMAR									
NEPAL	4		4	3		3			
NIGER									
NIGERIA	5	2	7	6	2	8			
NEW ZELAND									
NICARAGUA									
PAKISTAN	4	1	5	5	1	6			
PALESTINA	5		5	4		4			
PANAMA									
PARAGUAY									
PERU									
PHILIPPINES	17	8	25	8	8	16			
RUSSIAN FEDERATION	71	66	137	76	66	142			

COUNTRY OF NATIONALITY	Number of applications			Positive decisions			Negative decisions		
	W	M	W+M	W	M	W+M	W	M	W+M
RWANDA									
SAINT VINCENT AND THE GRENADINES									
SALVADOR									
SAUDI ARABIA	1		1	2		2			
SENEGAL									
SERBIA	3	5	8	1	5	6			
SIERRA LEONE									
SINGAPORE		2	2		2	2			
SOMALIA	3		3	3		3			
SOUTH AFRICA				1		1			
SOUTH KOREA	109	52	161	79	52	131	1		1
SRI LANKA				1		1			
STATELESS				1		1			
SUDAN									
SYRIA	6	6	12	6	6	12			
TAIWAN	4	1	5	4	1	5			
TAJKISTAN									
TANZANIA									
THAILAND	2	2	4	1	2	3			
TOGO									
TRYNIDAD AND TOBAGO									
TUNISIA	2		2	1		1			
TURKEY	74	30	104	47	30	77			
TURKMENISTAN									
UGANDA									
UKRAINE	445	306	751	459	306	765	3	2	5
UNITED KINGDOM									
UNKNOWN									
URUGWAY									
USA	29	27	56	36	27	63			
UZBEKISTAN		5	5	2	5	7			
YEMEN									
VENEZUELA									
VIETNAM	219	182	401	140	182	322	1	1	2
ZAMBIA									
ZIMBABWE	2	1	3	2	1	3			
TOTAL	1450	954	2404	1285	954	2239	7	5	12

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