

The Fight against Marriages of Convenience in the EU and in Hungary

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The aim of this study is to reveal the tendencies of the most typical form of abuse linked to free movement of EU citizens and their family members, namely marriages of convenience, through the lenses of Hungarian practice. Hoping that knowing more about these tendencies and getting more prepared for fighting against such abuses can help to achieve even more complete free movement, the tools of this fight, especially the most recent Handbook of the EU are introduced and analysed in the study.

Keywords: free movement, abuse, marriage of convenience, Handbook

1. Introduction

Originally the aim of the right to free movement was to facilitate the fulfilment of the purpose of the European Community, namely reaching a completely free market. Accordingly, initially we could only speak about the free movement of workers. In the '70s, however, the then called European Court of Justice gradually started to interpret the right to free movement broadly resulting in setting out the basis for the general right of residence for all EU citizens. "In recent years, due to the interpretation activities the European Court of Justice the tension somewhat seems to be dissolved that arises from the fact that at the beginning integration was basically of economic nature, and therefore Community institutions looked at citizens of other Member States primarily through the lenses of business processes, and this for a long time had not changed even as a result of the introduction of EU citizenship."¹ Today, however, the free movement of persons embodies one of the fundamental freedoms of the internal market, which is an area without internal borders in which freedom of movement is ensured in accordance with the provisions of the Treaty.²

The Free Movement Directive³ (2004/38/EC) summarized and re-regulated the already existing EU law and the principles established by the Court of Justice of the EU,⁴ and created a single directive of rules applicable for the entry and residence of EU citizens and their family members staying on the territory of another Member State for various purposes, including the declaration of the right and conditions of

¹ Laura Gyeney, *Aki a bölcsőt ringatja, avagy az uniós polgárságú gyermeket nevelő, harmadik állambeli személyi státusza a közösségi jogfejlődés fényében*, In: *Iustum Aequum Salutare* II. 2006/1–2., p. 113.

² Directive 2004/38/EC, Preamble (2).

³ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) OJ L 158, 30.4.2004, pp. 77 – 123.

⁴ Tamás Wetzel, *A bevándorlás kérdése Magyarországon*, Publikon Kiadó, Budapest 2011, p. 102.

permanent residence. The freedom of movement and right of residence on the one hand is therefore entitled to those EU citizens who move to or stay in a Member State of which they are not nationals, but the Free Movement Directive also applies to third-country family members who are accompanying or joining the Union citizen.⁵ The purpose of the Directive is to facilitate the exercise of fundamental and individual right to freedom of movement and residence within the territory of the Member States.⁶

„EU citizens on the move who genuinely rely on EU law are fully protected by EU rules. However, as in any area of law, there will be cases where individuals may seek to abuse freedom of movement, in an effort to bypass national immigration rules. Abuse of the right to free movement undermines this fundamental right for EU citizens. Effectively tackling such abuse is therefore essential to upholding this right.”⁷ With this in mind, the aim of this study is to reveal the tendencies of the most typical form of abuse, namely marriages of convenience that undermines the good reputation of free movement. Hoping that knowing more about these tendencies and getting more prepared for fighting against such abuses can help achieve even more complete free movement, the tools of this fight, especially the most recent relevant Handbook of the EU are introduced and analysed in the next sections.

2. Tendencies of Abuses related to the Right to Free Movement⁸

The abuse of rights related to free movement and residence can take several forms. In a broad sense even the phenomenon of the so-called “benefit tourism” belongs to this, when the primary purpose of an EU citizen and his/her family member is to receive social security benefits in other Member States. The Economist in November 2014 reported that “in the debate over immigration, accusations of benefits tourism are rife. (...) Britain has been talking of quotas on immigrants from the rest of the European Union. Germany is toying with setting a six-month maximum stay for jobseekers.”⁹ Nevertheless, the real size of this phenomenon is much argued and is many times seen overemphasized. Although, this question is also dealt with at an EU level and even the CJEU has made a ruling in the Dano case,¹⁰ and has helped the Member States by confirming that “a Member State must therefore have the possibility, pursuant to Article 7 of Directive 2004/38, of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State’s social assistance although they do not have sufficient resources to claim a right of residence.”¹¹

⁵ Directive 2004/38/EC Article 3(1).

⁶ Judgment of the Court (Third Chamber) of 5 May 2011 (reference for a preliminary ruling from the Supreme Court of the United Kingdom (United Kingdom)) — Shirley McCarthy v Secretary of State for the Home Department, Case C-434/09, Point 28.

⁷ Communication from the Commission to the European Parliament and the Council, Helping national authorities fight abuses of the right to free movement: Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens, COM(2014)0604 final, Point I.

⁸ Tendencies presented in this study rely on the information gathered by the Hungarian Ministry of Interior for the European Commission’s expert group on the Free Movement Directive, also presented at the conference in Győr, 20 May 2015, organized by the Hungarian Law Enforcement Association on secondary movements.

⁹ <http://www.economist.com/news/europe/21632571-european-court-justice-lets-governments-restrict-migrant-benefits-benefits-tourism-not-ok> (accessed on 1 October 2015).

¹⁰ Judgment of the Court (Grand Chamber) of 11 November 2014., Elisabeta Dano and Florin Dano v Jobcenter Leipzig. Case C-333/13.

¹¹ Point 78 of the Dano case, C-333/13.

This study, on the other hand, intends to tackle the issue of abuses exclusively from an aliens policing point of view, according to which two types of abuses can be identified: firstly the marriages of convenience and the similar phenomenon of partnership of convenience, secondly the false declaration of parenthood. While the first set of abuses results in an unreal marriage and partnership, the second set creates unreal parent-child relations, nevertheless in case of both types of abuses the primary purpose is to gain the right to free movement and residence based on family relationships of convenience. Given the fact that the most typical and most frequently detected embodiment of abuse is the marriage of convenience, the creation and application of which shows more and more frequently the involvement of organized criminal groups, the study focuses mainly on this form of abuse even among those immigration related abuses. In the meantime, it is worth highlighting that the identification and analysis of issues of abuses concerning family reunification has also been extensively dealt with by many researches, among others in the framework of the European Migration Network.¹²

Abuses are detected most frequently within the area of relationship of convenience. Third-country national family members of both EEA nationals as well as Hungarian nationals are involved in such abuses. Although we are aware of the fact that the family reunification of Hungarian nationals with their third-country national family members falls outside of the scope of Directive 2004/38/EC, nevertheless, as most of the abuses are detected in such relationships, and the methodology of them can be very similar to relationships falling within the scope of the Directive 2004/38/EC, furthermore such relationships can provide basis for applying for residence rights in other EU Member States.

Hungary has detected abuses concerning relationship of convenience already at the first visa application. Such tendencies are typical of Hungarian citizens, mainly women (at older age, many times with children), who make acquaintances during a holiday that in a short time end with concluding marriage. Many of such marriages are concluded in Egypt, Tunis, Algeria, Nigeria, Pakistan, according to the local religious (mainly Muslim) regulations. While in the countries listed above it is usual that, unless the marriage was concluded during the women's first visit, the women soon travel personally once again to the country of their fiancé for concluding the marriage, in other Arabic countries, such as in Libya, Syria, Afghanistan, the marriage is concluded without the personal presence of the bride, they are usually substituted by certain objects (*e.g.* knife or ash tray). Hungarian authorities have also experienced cases when the partners had got to know each other through the internet, and their personal meeting only took place a long after it, furthermore many times marriage was concluded at the first meeting. Generally speaking it can be stated that in most of such cases the spouses have basically no knowledge about each other concerning their personal characteristics, lives and present circumstances.

The immigration authorities also experienced the above explained patterns when adjudicating in applications for residence card allowing the holder to stay for a period exceeding three months. Marriages of convenience are still the most typical among relationships of convenience. There are still strong efforts by those who are staying in Hungary illegally, or have abused the right to asylum several times, or otherwise are unable to legalize their stays to have their stay legalized by fraudulently gaining the right to free movement and residence. Applicants connected with such abuses are most typically from African countries, such as Nigeria, Tunisia, Algeria and Egypt, who usually had met their spouses through the internet or during vacation. In most of the cases such third-country nationals state that they had arrived to Hungary through an internal Schengen border – most typically through Austria, Italy or Spain – and sometimes it is

¹² See the national reports and the synthesis report on the misuse of family reunification carried out by the European Migration network: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/family-reunification/index_en.htm (accessed on 1 October 2015).

observed that their passport contains no stamp contrary to the fact that it was issued in their country of origin.

It constitutes a big problem that during the concluding of the marriage in Hungary or when registering the marriage in the Hungarian registry, the procedures do not always include the thorough check of the authenticity of the relevant documents. In fact, many times such marriages are concluded by third-country nationals, who hide or claim the loss of their personal documents during their alien policing or criminal procedures, while they are able to show all the relevant documents when concluding the marriage, without having returned to their country of origin in order to get such documents. Based on the experiences of the authorities concerned, the conclusion of such marriages many times shows an organized nature: the Hungarian citizen spouses, many times women, are from the same county, or even from the same family, moreover the clients are represented by the same lawyer(s).

Hungary is not only affected by cases in which gaining Hungarian residence right is the aim, but with the help of Hungarian citizens concluding marriages of convenience with third-country nationals, a right of residence is applied for in other EU Member States. A series of such cases was detected in Hungary in 2013, and hundreds of cases have been revealed in which Serbian citizen men and Hungarian citizen women concluded marriages in Serbia and then both the men and women were transported mainly to German cities to apply for a residence card for the husbands with the assistance of the Hungarian wives. The great series of abuse was coordinated by an organized group of persons, and the committing of the abuses also showed a high level of organization, as interpretation, accommodation and transport to Serbia and to Germany were all provided by the criminal group.

Hungary has also detected a rising tendency in abuses related to partnerships of convenience. Most typically citizens of Kosovo, Syria and Nigeria applied for residence cards as partners of Hungarian citizens or persons dependent on Hungarian citizens, by holding an order issued by a notary public on verifying the related parties' statements. It was also observed that applicants in such cases had been trying to legalize their stay in Hungary for years in procedures of legal migration or asylum. Such applications end with a rejection as the national provisions of Hungary only extend the right to free movement for partners if they are registered according to the Act that provides the effect of the partnership generally be equivalent with marriage, and this is a possibility only provided in case of same sex couples.

It is also important to mention that related to this issue a case of an application for residence card as a partner of a Hungarian citizen by a Kosovar citizen was brought before the Court of Justice of the EU for preliminary ruling (Cocaj case, C-459/14). The request for a preliminary ruling from the Metropolitan Public Administration and Employment Court (Hungary) lodged on 3 October 2014 in the case of Fadil Cocaj vs. Office of Immigration and Nationality (hereinafter referred to as OIN) was focusing on the nature and the form of national registration that leads to the acknowledging a partner a family member under the Free Movement Directive: "In what manner, in what form and before which authority must the registration referred to in Article 2(2)(b) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 take place? If the registration has to be effected through an authority, what formal and substantive criteria must that authority fulfil in the Member State in question?" Finally, the request for preliminary ruling was withdrawn and therefore practitioners and researchers still need to wait for another case in order to have a ruling of the CJEU on such provisions, as well.

Although it is not the primary focus of the present study, tendencies related to false declaration of paternity is also worth to mention as the OIN has also detected cases when the third-country nationals apply for a residence card as a parent of a minor Hungarian citizen. Based on the circumstances revealed in such cases the applicant father usually does not live with the minor child, does not provide financial support or only

provides it during the application procedure. The third-country national applicant does not know anything about the personal circumstances of the child (*e.g.* characteristic features, illnesses, conditions of birth, the general routine of the child, etc.). The statement of the parents usually indicates that the child was born from an occasional relationship without marriage; the parents cannot answer the questions concerning the other party, either. The parents have never lived together, and they many times have contradicting answers concerning the father's correspondence with the child (*e.g.* its frequency, the time and place of meeting). In such cases it is very difficult to prove the lack of effective exercise of the right of custody, nevertheless the on the spot checks as well as interviewing the third-country national applicant and the mother of the child can lead to proving the fact that the fully effective paternal acknowledgment had only been made in order to gain the right of residence.

3. The Reaction on behalf of the EU and Hungary

3.1. The EU Handbook on Fighting Marriages of Convenience

In the Communication of 25 November 2013 "*Free movement of EU citizens and their families: Five actions to make a difference*",¹³ the Commission clarified EU citizens' rights and obligations under EU rules on free movement and set out five actions to help national authorities effectively apply those rules on the ground. The Communication recalled that EU law contains a series of robust safeguards allowing Member States to fight abuse. One of the concrete actions to help authorities implement these safeguards to their full potential was the preparation, together with Member States, of a handbook on addressing marriages of convenience.

Nevertheless, it was not a completely new idea at EU level.¹⁴ At its meeting of 26–27 April 2012, the Justice and Home Affairs Council approved the Roadmap on "*EU action on migratory pressures - A Strategic Response*", which refers to marriages of convenience as a means of facilitating illegal entry and residence of non-EU nationals in the EU. The Roadmap lists several actions to be undertaken by the Commission and/or the Member States with a view to improving the understanding of abuse of free movement rights by non-EU nationals and organised crime aiming to facilitate illegal immigration. One of these actions is the preparation of "a handbook on marriages of convenience, including indicative criteria to assist in the identification of sham marriages".

In response to the request by Member States mentioned above and in close cooperation with them, the Commission services have therefore prepared a "Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens" (hereinafter referred to as Handbook). The Handbook accompanies this Communication as a Staff Working Document.¹⁵ The Handbook is neither legally binding nor exhaustive; furthermore, it is without prejudice to existing EU law and its future development as well as to the authoritative interpretation of EU

¹³ COM(2013) 837 final – <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0837&rid=1> (accessed on 1 October 2015).

¹⁴ Indeed, the first document prepared at EU level related to the fight against marriages of convenience was Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience, Official Journal C 382, 16/12/1997 P. 0001 – 0002. On the brief evaluation of the birth and content of this document see Laura Gyenyey, *Legális bevándorlás az Európai Unióba, különös tekintettel a családi élet tiszteltben tartásának jogára*, Pázmány Press, Budapest 2014, pp. 183-184

¹⁵ Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens, SWD(2014) 284 final.

law given by the Court of Justice of the EU. “Its purpose is to help national authorities effectively tackle individual cases of abuse in the form of marriages of convenience while not compromising the fundamental goal of safeguarding and facilitating free movement of EU citizens and their family members using EU law in a *bona fide* way.”¹⁶

Nevertheless, some Member States expressed their critical comments during the preparation of the document¹⁷ as they thought the Handbook would not necessarily serve concrete operative interests, instead it has a more legal point of view tackling the issue of marriages of convenience, and the dominant aim of the document is to set out the limitations of national actions against abuses rather than focusing on how the states could effectively act against marriages of convenience in practice. Consequently, these critiques generate the interest of studying the main elements of the document with a view to providing practical help to EU Member States as it is a valid expectation from a Handbook.

The guidance provided by the Handbook (Section 2) is focused on marriages of convenience within the meaning of Directive 2004/38/EC¹⁸ as marriages contracted for the sole purpose of enjoying the right of free movement and residence under the Directive that someone would not have otherwise. The Handbook presents in detail the meaning of the constitutive elements of these notions and provides further indications on how to distinguish between genuine marriages and marriages of convenience: it describes the main traits of different forms of i) genuine marriages which are sometimes incorrectly considered as marriages of convenience (*e.g. arranged, proxy or consular marriages*) and ii) non-genuine marriages (*e.g. marriages of convenience, by deception, forced or bogus marriages*) and refers to the EU rules which apply in case the marriages of convenience include elements of trafficking in human beings.¹⁹

One might think that compared to the challenges of collecting the necessary proofs for a marriages of convenience such nuances between the different forms of marriages is of less importance, nevertheless the multicultural aspects of marriages necessitate that the authority carrying out any investigation related to suspected cases is aware of the cultural differences and does not take the ‘European’ – mostly romantic love-based – nature of a valid and also real marriage for granted. The Handbook can therefore serve as a solid guidance for officers on how to evaluate the elements of a case and the marriage involved individually and in its whole.

For instance it is a very enlightening statement of the Handbook that marriages of convenience are always valid marriages, as they were concluded keeping all the formal conditions of a marriage according to the applicable law at the time and place of the particular marriage. Proxy marriages therefore constitute a major challenge for the immigration authorities as they might be valid, but the purpose of the parties, being geographically apart from each other when marrying, still remains an issue to be found out. The rising number of proxy challenges and consequently the growing work and responsibility of the authorities related to this issue is also shown by the fact that the European Migration Network also collected the national practices on accepting proxy marriages according to national laws with the help of an ad-hoc query.

¹⁶ Handbook, Section I., pp. 2-3.

¹⁷ Own observation of the writer, having been a member of the relevant expert group.

¹⁸ Recital 28 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, p. 77.

¹⁹ Directive 2011/36/EU of the European Parliament and of the Council, of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>. (accessed on 1 October 2015).

Article 35 of the Directive allows Member States to adopt the necessary measures to refuse, terminate or withdraw any right conferred by the Directive in the case of abuse of rights or fraud, such as marriages of convenience. Section 3 of the Handbook, even before getting to the actual measures and the operational guidelines, contains an overall presentation of the rules that national authorities must take into account when taking measures to prevent or tackle abuse, in particular the EU rules on free movement and fundamental rights, and illustrates what these rules mean in practice. This section “aims to draw the attention of national authorities to the fact that any formal decision taken by national authorities in relation to marriages of convenience has to comply with a number of procedural safeguards.”²⁰

Section 3 therefore intends to highlight and keep the authorities far from any excessive measures at every single phase of a related procedure. It sets out that “an investigation into a marriage can only take place where there are reasonable doubts about its genuineness. Whilst, however, such reasonable doubts are sufficient as grounds for launching an investigation, once an investigation has taken place and has led to the conclusion that the marriage is of convenience, rights under free movement rules can be refused only where this is duly established by the national authorities concerned, in compliance with the relevant evidential standard.”²¹

Taken into account the length of the elaboration on such issues (17 pages) as well as the fact that the Handbook positions this Section before the actual measures, the fear of the European Commission that EU Member States would go beyond the legal limits on their fight against abuses is clearly reflected and dominant in the document. As a result, the reader waiting for recommendations on actual operational measures needs to show patience till page 32 is reached.

As for operational measures, the so-called life-cycle approach is used: “The best way to structure hints of abuse is to divide them into several groups corresponding to inherent stages of “*the life cycle*” of marriages of convenience. Some hints may be relevant in more than one stage but – *to avoid repetition* – they are placed in the most relevant part.”²² The identified stages according which hints of abuse are structured are the following: before the spouses meet for the first time, pre-marriage phase, the wedding, applying for a visa or a residence permit, residence on the host Member State, and finally the end of the marriage.

This life-cycle approach clearly draws the attention to the fact that abuse can and should be detected at the earliest possible stage and therefore it is not only the exclusive responsibility of the immigration authorities to reveal any forms of abuse, but several authorities and other participants should be able to detect and then signal such abuses. “At national level, many national authorities come in contact with couples who may or may not be married of convenience. Their active involvement and awareness may play the crucial role in detecting and tackling abusive marriages of convenience. Main public players involved in detection or investigation of marriages of convenience are: embassies and consulates; border guards; Police and law enforcement agencies; national immigration authorities issuing residence documents; other national authorities responsible for other benefits that may be targeted by abusers (*e.g.* welfare authorities); registrars and other officials; public prosecutors; national courts and intelligence agencies. Given the complexity of the issue and the practical difficulties related to the whole process of decision-taking, EU countries must, if they aspire to tackle marriages of convenience in an effective and dissuasive manner, provide, at national level, for robust and holistic policies addressing marriages of convenience and specifying the roles of different national players and their tasks.”²³

²⁰ Handbook, Section 3, p.16.

²¹ Handbook, Section 3.2, p. 28.

²² Handbook, Section 4.4, p. 36.

²³ Handbook, Section 4.7, pp. 46-47.

“Marriages of convenience are a complex phenomenon which can be tackled with the use of various investigation and law enforcement techniques and tools.”²⁴ Section 4.5 addresses in general terms investigation techniques and tools which are particularly relevant to marriages of convenience between mobile EU citizens and non-EU spouses; however these can also be relevant for other types of marriages of convenience. The Handbook highlights that “in all cases, reinforced cross-border cooperation and sharing of best practices in this area between competent national authorities, in particular within the framework of the EU policy cycle for organised and serious international crime, can significantly contribute to effectively tackling this form of abuse.”²⁵

Consequently, a separate Section (Section 4.7) is devoted to the issue and forms of cross-border co-operation in tackling marriages of convenience, in which the importance of Europol and Eurojust is introduced. It also highlights one specific tool or method that has already proved to be effective in fighting against cross-border crimes, the setting up of Joint Investigation Teams (JITs). “JITs are suitable and useful tools for effective investigation and prosecution of cases related to trafficking in human beings and can offer solutions for addressing the lack of national financial resources needed to proceed with the investigations. The EU agencies also participate in a supportive role and can provide necessary funding to the national authorities involved to cover the costs of joint investigations. Cross-border co-operation may help to overcome significant differences between the national legal systems, for example to seek the best venue for prosecution to resolve a conflict of jurisdiction where two or more EU Member States can have grounds for prosecution. JITs can also include temporary exchange of liaison officers to assist in debriefing of own nationals involved in the abuse.”²⁶ Europol also issued a Joint Investigation Teams Manual²⁷ in 2011 with the aim of informing practitioners about the legal basis and requirements for setting up a JIT and providing advice on when a JIT can be usefully employed.

3.2. The Fight against Abuse in Hungary²⁸

In Hungary the most frequently used method to detect relationships of convenience is the parallel interviewing of the parties. The most conspicuous characteristics of such relationships are the following: the parties got to know each other on the internet or during a vacation; the lack of common language of communication; a major age difference; the third-country national party is usually undereducated and has a questionable financial and insecure existential situation; the third-country national is completely lacking travel references, and the parties envision the family reunification exclusively on the territory of Hungary. In many cases the third-country national applicants have never visited Hungary, the Schengen area or have not even left their own country before. The interviews many times reveal that the parties do not even know the most basic information about each other; their answers given to the same questions differ to a great extent.

Apart from the parallel interviews, the Office of Immigration and Nationality can get in touch with further family members or make on the spot checks, or even a complete so-called environmental study can be

²⁴ Handbook, Section 4.5, p. 41.

²⁵ Handbook, Section 4.5, p. 41.

²⁶ Handbook, Section 4.6, p. 46.

²⁷ Joint Investigation Teams Manual, The Council of the EU, 15790/1/11, <https://www.europol.europa.eu/content/page/joint-investigation-teams-989> (accessed on 1 October 2015).

²⁸ Fight against abuses presented in this study rely on the information gathered by the Hungarian Ministry of Interior for the European Commission’s expert group on the Free Movement Directive, also presented at the conference in Győr, 20 May 2015, organized by the Hungarian Law Enforcement Association on secondary movements.

conducted, which can provide further essential information for evaluating the authenticity of the relationship. In case of on the spot checks, the parties are usually not informed in advance in order not to make them able to influence the outcome of the check (the home could be decorated or they could get prepared for the on the spot interview). In private homes such checks can primarily be carried out between 8 a.m. and 8 p.m. During the on the spot check, it is usually observed who lives in the flat/house habitually, and what signs refer to the permanent presence of certain persons in the flat/house. Photos are taken about photos, personal belongings, clothes, shoes, and bathroom items. Minutes are prepared on the spot about observations and interviews made and a copy of it is given to the concerned parties. The OIN officials also try to collect information about the environment of the parties *e.g.* by interviewing the neighbours, and also make efforts to ascertain whether the information provided during the interview is real.

Particularly in cases of registered partners' databases, such as the database on the personal data and address or the immigration database, are also used for receiving information on whether the officially registered address of the third-country national family member and that of the Hungarian/EEA national are the same.

It is also important that legal measures should be supporting the effective sanctioning of a revealed abuse. In Hungary Section 14(2) of Act I of 2007 on the Entry and Residence of Persons having the Right to Free Movement and Residence sets out the following: "The right of residence of a family member who is a third-country national shall terminate also if the family relationship was established for the purpose of obtaining the right of residence." Furthermore, in the cases of marriages concluded with Hungarian nationals, a special legal requirement set out in Section 24(2) of Government Decree 113/2007 intends to provide a preliminary filter for marriages of convenience, as the marriage certificate in this case can only be accepted to prove the family relationship if the marriage concluded abroad have been registered in Hungary, as well.

As for the effective sanctioning of relationships of convenience, it should be highlighted that the new Hungarian Criminal Code (Act C of 2012) having entered into force on 1 July 2013 contains a new crime, namely the "abuse by establishing family relations": "355. § A person above the age of 18, who, for financial gain, establishes a family relationship or takes a full force paternity statement only for the issuance of residence documents, if no more serious crime is realized, shall be punished with two years of imprisonment." Based on this, in marriages of convenience concluded between Serbian citizen men and Hungarian citizen women, people were accused in relation with the series of abuses mentioned above.

International cooperation necessarily had to take place during the investigation of the series of Hungarian-Serbian marriages of convenience, and therefore the Hungarian police authorities got in touch with the competent German authorities in order to get to know which of the Kosovar citizens had applied for or received residence documents in Germany. The cooperation with the Serbian partners has been made easier by the police liaison officer of Hungary in Belgrade, who can provide help in order to get the marriage certificates and the background information concerning the Serbian husbands.

4. Conclusions

Data submitted by Member States on recently identified marriages of convenience between non-EU nationals and EU citizens exercising their right to free movement within the EU shows that this phenomenon exists but varies significantly between Member States.²⁹ Nevertheless, it concerns all the Member States and therefore facilitating the effective national responses to the abuses was clearly an area for the EU to act. The simple existence of the EU Handbook on fighting against marriages of convenience

²⁹ Communication "Free movement of EU citizens and their families: Five actions to make a difference", Section 3.1.

is therefore symbolic and reflects the EU's support in Member States to actively act against abuses in order to be able to uphold the provisional system of free movement in the meantime.

The content of the Handbook, on the other hand, might not be a real practical tool to be used when planning an actual operation, but can definitely serve as a good methodological background as well as a source of information for stakeholders in this fight who are not yet familiar so much with the phenomenon of marriages of convenience. The holistic approach it facilitates and the life-cycle approach it uses to identify the hints and tools at every stage can also urge Member States to evaluate their state of play in this regard. As for Hungary, it can be concluded that the immigration officers as well as the Police carrying out investigation in these abuses are familiar with the practicalities of the detection of and the fight against such abuses, yet improvements at preliminary stages, as well as involvement of further stakeholders in this fight can still be improved, just as prevention measures should be facilitated.

One issue that the Handbook also highlights is the inevitable need for international cooperation in the fight against the series of abuses most recently detected throughout Europe. As migrants more and more realize that instead of risking their lives to illegally get into the territory of the EU a less risky and even less costly way is to enter into a marriage of convenience, as the international organized crime groups more and more realize the opportunities in organizing such marriages, and as long as poverty and other vulnerability factors can actually push EU citizens to contribute to such abuses, authorities should be prepared to be able to, on the one hand, detect marriages of convenience, and on the other hand, effectively investigate the organized groups that are behind them.

A comparative study³⁰ on family reunification policies in six Member States also states that an increasing attention to possible fraudulent marriages can be observed. "This attention is frequently evident during the assessment of the first application, when the family relationship has to be identified."³¹ "The way the possible fraudulent character of the marriage is assessed also shows similarities; conducting interviews with both spouses simultaneously, house calls at the sponsor's home and seeking information from third parties."³²

The effective reaction to the problem of marriages of convenience may also have an impact on the issue of the so-called "brexit", that is the possible exit of the United Kingdom of the EU. In his letter³³ to Donald Tusk on 10 November 2015 David Cameron formally set out his demands in a letter to the president of the European Council Donald Tusk saying four objectives lie at the heart of the UK's renegotiations. The point of restricting on migration also put an emphasis on fighting sham marriages: "We also need to crack down on the abuse of free movement, an issue on which I have found wide support in my discussions with colleagues. This includes tougher and longer re-entry bans for fraudsters and people who collude in sham marriages. It means addressing the fact that it is easier for an EU citizen to bring a non-EU spouse to Britain than it is for a British citizen to do the same. It means stronger powers to deport criminals and stop them coming back, as well as preventing entry in the first place. And it means addressing ECJ judgments that have widened the scope of free movement in a way that has made it more difficult to tackle this kind of abuse."

In the meantime, let me suggest not to suspect abuse so eagerly regarding third-country nationals who choose legal migration channels. In my opinion, in the middle of the migration situation of the EU dominated by the irregularity of migration, cases of legal migration should be dominated by client friendly

³⁰ Tineke Strik, Betty de Hart, Ellen Nissen, Family Reunification: a barrier or facilitator of integration? A comparative study, HW Oisterwijk: Wolf Legal Publishers, 2013.

³¹ Strik et al, p. 39.

³² Strik et al, p. 41.

³³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf (accessed on 12 November 2015)

and client centric administration. This is essential to decrease the continuously increasing level of xenophobia in Europe and the growing securitization of migration issues.³⁴

³⁴ See on this phenomenon: Valsamis Mitsilegas, *Immigration Control in the Era of Globalization, Deflecting Foreigners, Weakening Citizens, Strengthening the State*, in: *Indiana Journal of Global Legal Studies*, Vol. 19, No. 1, Winter 2012.