MARRIAGES IN THE 'MIDST OF MIGRATION' – EU APPROACHES TO ACTION AGAINST RELATIONSHIPS OF CONVENIENCE[*]

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It is essential to point out at the outset that evidence of the link between marriage and migration in space and time has been available from very early on in history (Brettel 2018, 81), but that the use of marriage and, moving towards the present day, other family relationships as a means of acquiring the right to residence, has only recently been seen at historical scales. In the context of the European Union's rules on residence, such relationships are the basis for a direct abuse of the right of free movement and residence, and the related struggle seems to be intensifying with the rise of migration, one of the most prominent globalisation factors of the 21st century. A thorough examination of the available options for the EU to take action against the phenomenon of relationships of convenience reveals the need for constructive steps to be taken. The link between these relationships and various criminal activities introduces a new dimension to the investigation of a phenomenon that could not be precisely defined.

In light of these considerations, the present paper seeks to explore how the European Union has sought to respond to the growing phenomenon of relationships of convenience within migration contexts, outlining the emerging legal and institutional mechanisms designed to counter such practices, while assessing their effectiveness and coherence in practice.

Keywords
relationships of convenience, migration, European Union, Eurojust, joint investigation teams, criminalisation

Introduction

The term *marriage of convenience* refers to a *'marriage concluded between a national of a Member State or a third-country national legally resident in a Member State and a third-country national, with the sole aim of circumventing the rules on entry and residence of third-country nationals and obtaining for the third-country national a residence permit or authority to reside in a Member State'* (Council 1997, Article 1.) The pursuit of benefits by irregular migrants through marriage is a matter of concern.

[*] DOI 10.21868/PGnG.2024.1.8.
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SUPPORTED BY THE ÚNKP-22-4 NEW NATIONAL EXCELLENCE PROGRAM OF THE MINISTRY FOR CULTURE AND INNOVATION FROM THE SOURCE OF THE NATIONAL RESEARCH, DEVELOPMENT AND INNOVATION FUND.

Such benefits may include residence permits, citizenship and, in some cases, family reunification.

This study, which aims to examine the action taken concerning marriage and other relationships of convenience, in line with the objectives set by the European Union Agency for Criminal Justice Cooperation (hereinafter Eurojust) (Eurojust 2021) and the Hungarian perspective (Ministry of Interior 2019), intends to draw attention to these criminal offences involving *low-risk for the offenders* but entailing significant dangers, as the actions examined are typically isolated and connected to relatively minor criminal offences and are subject to minor sanctions. However, a closer look reveals an often *fairly complex system* operated by an international criminal organisation that, while directly targeting the abuse of the right of free movement and residence, is also based on the exploitation of vulnerable people. Regarding this phenomenon, which – in the last ten years – has seen a doubling in the number of requests for assistance from national authorities to Eurojust, it may be stated – as also confirmed by the practical experience of the investigations supported by the Eurojust and closed in 2020 (see Eurojust 2021) – that the best way to combat this phenomenon is to adopt a *comprehensive approach,* and the key lies in cooperation.

1. The distinctive role of JITs

In accordance with the rapidly evolving nature of the phenomenon, a growing range of action options is emerging. It is worth noting that the Commission's Handbook on the relevant legal framework (Commission 2014a, 45–47) already explicitly emphasised the importance of *cross-border cooperation* in combating relationships of convenience, highlighting the assistance that the *European Union Agency for Law Enforcement Cooperation* (hereinafter Europol) may provide to national authorities. This finding was endorsed by the Commission in a Communication also published in 2014 (Commission 2014b, 30). The importance of said issue was also highlighted in the 2021 Eurojust report, which was specifically focused on this subject (Eurojust 2021, 24). Consequently, a new area of crime has arisen, necessitating instruments for joint and effective action (Mitsilegas 2014, 417), in particular the *Joint Investigation Team* (hereinafter JIT, see Eurojust 2023), a specific form of mutual legal assistance in criminal matters, that proved to be a very effective tool for cooperation also regarding Eurojust's multilateral support (Polt 2019a, 334).

In an area where there is such an urgent need, it is therefore not surprising that JITs have proliferated as a reality emerging from a 'dream scenario' (Töttős 2016, 326). An example of the connection between the phenomenon in question and other crimes is the case of *relationships of convenience combined with human trafficking for sexual exploitation* from Slovakia to the United Kingdom between 2011 and 2017 (Boister 2018, 215; Europol 2017; BBC 2019). In particular, in the United Kingdom, the investigation was initiated on charges of sexual assault, facilitating human smuggling, document forgery, and other related crimes. In Slovakia, the investigation was conducted for extortion, obstruction of justice, and attempted obstruction of justice. A joint investigation team was established in 2013. The need for a JIT was identified at the level of bilateral police relations. Eurojust played a pivotal role in this, facilitating communication between national authorities during the establishment of and making

preparations for the Team and assisting in the drafting of the agreement to set up the team and its subsequent amendment. It is worth mentioning that the Slovak authorities requested an explanation as to why the head of the Team in the United Kingdom was a police officer and not a prosecutor. Eurojust clarified that the way investigative and prosecutorial functions are separated in England and Wales means that, although they work closely together in the proceedings of criminal cases, their roles are clearly defined. Under this system, the prosecutor could not order the police to take action, control or lead the investigation, so the head of their Team must be a police officer. Eurojust also helped find a legal solution for the participation of a translator in the JIT (Eurojust 2018a, 35).

In August 2018, a significant operation targeting a major organised criminal network that operated from India and Nepal to Germany, offering a *range of illicit services including human smuggling and facilitating relationships of convenience*, also resulted in notable achievements. The irregular migrants paid approximately twelve thousand euros each for the comprehensive services of the smuggler, including travel to Europe, entry into Germany, application for a residence permit and the marriage ceremony. On the day of the operation, the German, Romanian and Polish authorities, with the support of Eurojust and Europol, proceeded with the seizure of a substantial amount of evidence. This included items such as marriage certificates, business cards of wedding planners, unused wedding rings, electronic storage devices and fourteen thousand euros in cash (Eurojust 2018b). In October 2020, a criminal network that had been under investigation by law enforcement since April 2018 was dismantled in a joint Franco-Belgian investigation supported by Europol. The network under discussion has been involved in the *facilitation of migrant smuggling, the trafficking of human beings (including minors), forced begging, social benefit fraud and document forgery*. Thirteen individuals were apprehended by the French authorities in the vicinity of Paris and Lyon, among whom it is believed that the network's kingpins were present. A total of fifteen minors, who had been exploited by their own families, were rescued and placed under the protection of the relevant judicial authorities. In the course of the operation, officers raided seven locations, seizing a number of items including forged documents such as ID cards, passports and counterfeit birth and marriage certificates (Europol 2020a).

It could thus be hypothesised that relationships of convenience investigated by JITs typically occur in conjunction with more severe criminal offences. A slightly more nuanced picture is the case of the network of relationships of convenience dismantled in Denmark and Germany in June 2018, where 'only' the *activity of organising* was reported, but on a very large scale: from 2015 onwards, the criminals organised *fake marriages* for around 1,200 non-EU citizens with stolen and false identity documents, for a fee of thirteen thousand euros each, with EU citizens who had suffered no further harm in this respect, and who received compensation without living with their alleged spouses. The JIT, supported by Eurojust and Europol, carried out a joint day to take action as a result of eighteen months of coordinated investigations (Eurojust 2019, 27). In addition to organisation, *other related crimes, such as document forgery*, were also discussed in the case in which a criminal network operating in several Spanish cities and organising at least fifty relationships of convenience was uncovered in August 2020. The criminal groups typically either recruited migrants residing illegally in the EU or

arranged for their smuggling into Spain from outside the European continent. The criminal organisation then *recruited women*, primarily from Romania, offering them significant financial compensation in exchange for becoming the spouses of non-EU citizens who wished to legalise their stay in the European Union. The women involved in such sham marriages typically returned to their home countries immediately. The operation, which was backed by Europol, led to the execution of numerous raids by Spanish investigators on various residential and business premises. These raids resulted in the seizure of more than ten thousand euros in cash, along with other pieces of evidence (Europol 2020b).

Such cooperation is, incidentally, ongoing in relation to the phenomenon under review. Most recently, in January 2024, a criminal network involved in counterfeiting and money laundering was uncovered, which facilitated irregular migration to the EU by arranging relationships of convenience. The investigation into this criminal network revealed that the suspects allegedly recruited Latvian and Portuguese nationals and facilitated their journeys to Cyprus, where the women entered into arranged marriages with third-country nationals. The suspects, predominantly comprising Indian, Pakistani and Portuguese citizens, were responsible for the coordination of all logistical aspects of the operation, including the purchasing of flight tickets, the acquisition of passports and other requisite documentation. The operation was conducted within the framework of Europol's Operational Task Force (hereinafter OTF) Limassol, which carried out an action day headed by Cyprus, involving Latvia and Portugal, and with support from Eurojust. The activities of the OTF resulted in the identification of several perpetrators, suspicious transactions, and a total of one hundred thirty-three relationships of convenience between the parties (Europol 2024).

2. The necessity for coordinated regulation – the creation of the possibility of criminalisation

Nevertheless, the increasing *internationalisation of crime* (Polt 2019a, 331–332) and the *emergence of new dimensions of crime* have also made it clear that traditional national legislation and application (with considerable differences in principle among the Member States) is not going to achieve much against the forms of crime that pose the greatest threat to European societies (Irk 2017, 113). Indeed, the existence of different forms of criminal protection may also result in offenders who are 'sensitive' to such differences between the Member States and choose their place of operation or attempt to 'be subject to' the jurisdiction of a Member State where they may expect less severe legal consequences (Madai 2019, 134–135). This approach is not a novel phenomenon in the field of law. One might consider the phenomenon of *'forum shopping,'* which is analogous in substance and is well-known in private international law. Forum shopping also requires the harmonisation of national criminal laws (Udvarhelyi 2018, 296).

As already highlighted in Eurojust's report for 2017, an increased risk in the fight against criminal groups organising relationships of convenience is that they are fully *aware of the differences between the relevant legal frameworks* in the Member States and seek to choose the more permissive legal framework (Eurojust 2018a, 33). In light of this, Eurojust was invited in 2018 to collect and analyse the differences in national legislation affecting cooperation between Member States, with a specific focus on

relationships of convenience (Eurojust 2018c, 11). In this context, it is also worth noting that some studies have suggested the need to establish certain *minimum rules of criminal law*. By regulating at the EU level, the 'interoperability' of criminal law systems (Karsai 2004, 27) would obviously make cooperation between the investigating authorities of the Member States smoother (Töttős 2016, 322).

In the context of coordinated regulation, it is also necessary to consider the question of how relationships of convenience should be criminalised. The conceptual definitions reflect the elements of intentionality and material gain that are evident in the growing EU-wide manifestations of *criminal law categories* that sanction acts that facilitate illegal residence and, with them, third parties involved (Eurojust 2021, 8). These categories correspond to the requirements of the so-called *'Facilitators Package'* (hereinafter the Package), which may be described as one of the 'protagonists' of the EU's criminalising approach to irregular migration and transnational organised crime. This approach has gained increased interest over the last twenty years, coinciding with the increased interest in irregular migration and transnational organised crime (Minetti 2020, 335).

The Package, which comprises Council Directive 2002/90/EC (Council 2002a) and Council Framework Decision 2002/946/JHA (Council 2002b), was created in response to the necessity for measures to combat irregular migration. According to Council Directive 2002/90/EC, recital 2, these measures are justified *'both in connection with unauthorised crossing of the border in the strict sense and for the purpose of sustaining networks which exploit human beings'*, thus following the global trend that turns to the tool system of criminal law instead of handling the issue through law enforcement (Madai 2017, 8). Under the Package, any act of intentional assistance, other than humanitarian assistance, to a non-EU national entering or transiting the EU without authorisation and, in addition to the purpose of obtaining financial gain, to a non-EU national illegally staying on the territory of an EU Member State, should be subject to criminal sanctions in all Member States (Council 2002a, Article 1.), regardless of the different forms of assistance, thus opening the way to criminalising relationships of convenience.

Taking into account the need for a legal framework that creates an appropriate balance between ensuring adequate criminal law sanctions against human smuggling involving irregular migrants and avoiding the risk of criminalising those who provide humanitarian assistance, the Commission has undertaken to develop a framework in *action plans* for operational cooperation between EU Member States and law enforcement agencies, a comprehensive approach and a focus on digital smuggling and data collection (Fallone 2021). This framework has been interpreted in some quarters by the literature as a manifestation of preventive criminal law (Minetti 2020, 335), or as creating too much leeway for Member States in terms of sanctions (Della Torre 2018, 88) and creating a more hostile reception that is less compatible with EU values (Kozáry 2018, 415).

The Eurojust report for 2021 indicates that only *eight of the twenty-seven EU Member States* have legislation that specifically *criminalises relationships of convenience*: Austria, Belgium, Cyprus, France, Hungary, Luxembourg, Malta and Portugal (Eurojust 2021, 31–40). In the majority of Member States, the establishment of marriages of convenience or other relationships of convenience for the purpose of

obtaining or retaining a residence permit is addressed by the legislation on immigration policing. Exceptions in this sense are *Hungary*[2] and Luxembourg, where the action under examination is criminal, and Malta, where it is in the code specifically dealing with marriage. With regard to the Member States in question, it is interesting to note that Article 388 of the *Luxembourg* legislation provides for a higher penalty for the conduct of a person who accepts money in order to carry out conduct described in Article 387 and that the stage of attempt of both forms is punishable separately. However, the highest penalty is provided for the conduct of an offender who coerces another person by force or threat to enter into a marriage of convenience or a relationship of convenience, as provided for in Article 389 of the aforementioned Code (Legilux 2023). Concerning the legislative provision of *Malta,* it is also interesting to note that, without mentioning other family relationships, the only purpose of the marriage as an offence is the acquisition of citizenship, which is a 'classic' right. Furthermore, the right to free movement, entry, employment and residence, as well as the right to medical care, is also an alternative purpose. Finally, both parties to the marriage are punishable under the same penalty, in a separate form under Article 38 of the Code. In accordance with Article 38(1) and (3), any right or benefit acquired by marriage that is listed under paragraph 1 may be withdrawn or annulled by the relevant authority under Article 38(2) (Legislation Malta 2023).

In addition to the creation of sui generis criminal offences specifically involving the establishment of certain relationships of convenience, we may also identify the formulation of criminal acts that essentially support irregular migration by facilitating illegal stay, as in the case of *Lithuania* and *Slovakia,* which Member States, although according to the report of Eurojust cited above, have created sui generis criminal offences about relationships of convenience (Eurojust 2021, 36–37), in substance, they are more similar to the criminal offence of *facilitation of unauthorised residence* (Section 354 of the Criminal Code; Refworld 2023, Article 285; Ilo 2023a, Article 356). However, in *Estonia,* for example, marriages of convenience are directly regulated by civil law, forming the basis for the annulment of the marriage in question and the refusal of a temporary residence permit (Ilo 2023b, Article 9, paragraph 6; Riigiteataja 2023, Article 26).

3. Case-law observations

The experiences of the cases contained in the 2021 report referred to by Eurojust also provide useful practical additions, which all point to an interesting aspect of the phenomenon.

In the *Amouda case,* fake companies were used to recruit prospective bridegrooms (Eurojust 2021, 13; Eurojust 2020a), while the *Just Married* case showed the difficulties of investigating networked crimes based on social media (Eurojust 2021, 25; Eurojust 2020b). The significance of the *Agentur case* lies in its demonstration of the shortcomings of Danish legislation. Consequently, a special unit was established to

[2] The criminal offence of abuse by establishing family relationships, which is one of the crimes against public administration, was introduced by Section 355 of Act C of 2012 on the Criminal Code (hereinafter the Criminal Code), entered into force on 1 July 2013.

examine and investigate all marriage applications where the individuals seeking to marry are not both Danish or Scandinavian citizens, or both possess permanent residence permits in Denmark (Eurojust 2021, 18; Eurojust 2020c). Finally, the *Vantage case* highlighted the importance of coordination and information sharing in combating relationships of convenience. A multidisciplinary approach, involving, for instance, registry staff, proved particularly effective in cases where suspicious activities lie beyond the purview of the judiciary (Eurojust 2021, 10; Eurojust 2020d).

It may be seen as a cardinal finding of the cited Eurojust report that, if *relationships of convenience* become a *'modus operandi'* in a complex scheme involving organised criminal groups, these relationships may easily take on an *'exploitative' character*. In such cases, women recruited for relationships of convenience are considered victims, and their protection requires reinforcement. The report explicitly cites the Dutch and Czech positions as examples, which recognise that relationships of convenience, albeit in connection with high-substantive crimes such as trafficking in human beings and human smuggling, do result in victimisation (Eurojust 2021, 26).

Closing remarks

In light of the aforementioned considerations, it may be concluded that, in addition to the organisation of JITs and the coordination and refinement of the relevant regulations in a broader sense, it is equally important to identify and utilise *other tools* that may be developed to address this phenomenon. One such tool is the mapping of *networks organised through social media* and their difficult-to-follow *financial transactions*. It is also important to highlight the problems that arise from the existence of *separate civil registers* in certain Member States. Furthermore, there is a need to remedy the lack of *communication between national authorities* in different jurisdictions and to set up a system to help *identify and support victims* (Eurojust 2021, 26).

In connection with the objectives outlined at the beginning of this study, and with regard to the cornerstone of the fight against migration-related relationships of convenience, the analysis underlines the importance of a *multidisciplinary approach* and *cooperation*. The phenomenon, complex in its structure and cross-border in its effects, could only be effectively addressed through the combined efforts of criminal law, immigration policing, and civil law – and, at the same time, through close collaboration between the competent authorities of the Member States and the Member States themselves. These considerations do not suggest that the European Union's legal framework alone could provide a comprehensive solution, nor that national mechanisms would suffice in isolation. Rather, the *two levels presuppose and complement one another* in both interpretation and action. The experience gained through the examination of relationships of convenience thus points to a broader evolution within European criminal law – one that is moving, albeit gradually, towards a *single judicial area* (Polt 2019b, 14). New forms of cooperation and a re-evaluation of traditional perspectives are required to confront phenomena that, while rooted in classical criminal law concepts, are shaped by the *dynamics of globalisation*. These relationships – products of the 'marriage' between criminal law and migration pressures – go beyond *territorial and functional limits of criminal law* (Sieber 2007, 1; 31), calling for a coordinated response. Only through such cooperation, could the European Union ensure

that its measures protect not only the integrity of the right of free movement, but also those whose vulnerability places them at the very centre of this complex and evolving phenomenon.

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