

# FORCED MARRIAGES IN EUROPE: A FORM OF GENDER-BASED VIOLENCE AND VIOLATION OF HUMAN RIGHTS

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**Abstract:** Forced marriages are recognized as a form of violating human rights, discriminating against women as well as a form of gender-based violence which both women and children suffer. In numerous international treaties and in other supranational documents, this practice is perceived as a violation against people's dignity and as an attempt against fundamental rights such as freedom and equality. Moreover, the forced marriage is a crime condemned by the International and European human rights law: it violates the right to freely marry and the right to live a life free of gender-based violence. The objective of this article is to critically review the international and European obligations of States in relation to forced marriages. This critical review will be carried out through normative analysis from Legal Feminism and Feminist Theory.

**Keywords:** forced marriages; human rights; gender-based violence; free consent; free marriage; Istanbul Convention.

**Summary:** 1. INTRODUCTION. 2. FORCED MARRIAGES AS A VIOLATION OF HUMAN RIGHTS. 2.1. The right to marry with complete and free consent. 2.2. The right to a life free from gender violence. 3. FORCED MARRIAGES AS A FORM OF GENDER-BASED VIOLENCE. 3.1. The legal instruments of the EU. 3.2. The Council of Europe: resolutions and Istanbul Convention. 3.3. Normative heterogeneity in the State Members. 4. CONCLUSIONS.

## 1. INTRODUCTION

The objective of this article is to critically review the international and European obligations of States in relation to forced marriages. This critical review will be carried out through normative analysis from Legal Feminism.

The investigation is based on Legal Feminism and Feminist Theory, mainly for two reasons: the first, because violence against women has focused much of the feminist debates of recent decades; and the second, because its methods, analysis and proposals make it possible to demonstrate the logic of legal systems and contribute to their transformation through Law.

The analyzes and contributions of Legal Feminism raise objections to the classical theories on human rights and Social Justice, focused mainly on egalitarian distributive claims and claims for the recognition of differences (Bodelón González, 2005;

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Fraser, 2008), which allow question the current regulation of violence against women and adapt it from a conception of Justice that guarantees the recognition and effectiveness of women's rights.

Next, the problem of forced marriages as a violation of human rights and as a form of gender-based violence will be analyzed.

## **2. FORCED MARRIAGES AS A VIOLATION OF HUMAN RIGHTS**

The International Human Rights Law gathers contributions from feminists at a global level and, consequently, some of the human rights norms represent the basis to defend equality, non-discrimination and the right to a life free of violence in all countries. "The women's movement relied on this shift of paradigm to demand that women's rights be considered human rights and to make the link between equality and non-discrimination, an essential link to understand a true equality between all human beings" (Facio, 2011, p. 6).

Forced marriage is recognized as a form of violation of human rights, discrimination against women and children (young girls) and a form of gender-based violence (GBV) which women and young girls suffer. In numerous international treaties and in other supranational documents, this practice is perceived as a violation against people's dignity and as an attempt against fundamental rights such as freedom and equality.

Forced marriages is a form of gender-based violence, as a practice that constitutes another form of violence against women in patriarchal societies where women have less value and are considered as an object of property of their husbands and families (Igareda González, 2017). It is true that forced marriages occur both against women and men, but the number of female victims is disproportionately higher, since it is estimated that around 85 per cent of victims of forced marriages are women and girls (Heaton, McCallum and Jogi, 2009).

In the last two decades, the legal and normative framework, both international and European, has been broadened in order to put an end to forced marriages regarded as a harmful cultural practice which represents a form of gender-based violence. Legal instruments have been adopted that highlight the importance of the participation of different States in enacting laws that prevent the violation of rights arising from this practice (Vidal Gallardo, 2016).

Within the framework of the United Nations Organization (from this point forward, UN), various instruments have been adopted that recognize forced marriage as a manifestation of discrimination against women. In these instruments there has been a significant evolution recognizing the right to celebrate a marriage with the free and full consent of the contracting parties, coming to value the practice of forced marriage as a discrimination against women to finally be considered an act of gender violence (Trapero Barreales, 2016) and a form of human trafficking (Warsaw Convention, 2005, Directive 2011/36/EU). Most of these legal instruments have been urging the state

authorities to adopt adequate measures for the prevention of forced marriage as well as for the protection and assistance towards those who have been victims (Torres Rosell, 2015).

### 2.1. The right to marry with complete and free consent

There are various dispositions on human rights that apply to forced marriage, provisions that regulate aspects related to age, consent, and equality between both parties and women's rights.

The Universal Declaration on Human Rights (UDHR) from the 10 of December of 1948, in its article, it clearly states the following:

1. Men and women, starting from the age of consent, have the right, without restriction on grounds of race, nationality or religion, to marry and found a family, and enjoy equal rights in marriage, during marriage and in marriage as well as in case of dissolution of the marriage. 2. Only through free and full consent of the future spouses can the marriage be contracted. 3. The family is the natural and fundamental element of society and is entitled to the protection of society and the State.

Marriage is recognized as a right in an environment in which equality between women and men govern, therefore, it is assumed that the future wife is an autonomous subject and that their consent is free and full, requirements that in cases of forced marriages are not fulfilled because of the coercion it entails (Torres Rosell, 2015, p. 834).

The *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (art. 1, 2 y 3)<sup>2</sup> provides that marriage cannot be contracted legally without the full and free consent between both parties, expressed by the former in person, after the required publicity, before the competent authority to formalize the marriage and witnesses, in accordance with the law (ast.1) and adds that the States will adopt the necessary legal measures in order to determine the minimal age for marriage (art.2). Therefore, it reiterates that marriages must be contracted freely and with the full consent of both parties, requirements that forced marriages violate.

The *Recommendation regarding consent for marriage, the minimal age to marry and the register of marriages* (1965),<sup>3</sup> emphasizes, once again, on the provisions of the aforementioned texts regarding marriage with full and free consent of both parties and the minimum age for marriage. In its first Principle, it establishes that:

a) Marriage cannot be legally contracted without the full and free consent of both parties, expressed by them in person, after due publicity, before the competent authority to formalize the marriage, and witnesses, in accordance

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<sup>2</sup> Approved on the 7th of November of 1962 by the United Nations General Assembly.

<sup>3</sup> Resolution 2018(XX), from the 1st of November of 1965.

with the law. b) Only when the competent authorities are satisfied that each of the parties has expressed their full and free consent before a competent authority, in the presence of witnesses and in the manner prescribed by law, there shall be granted permission to marry on the basis of power, without having subsequently withdrawn it.

The same thing is sustained by the International Pacts of 1966, both norms with binding force. The *International Covenant on Civil and Political Rights* (art. 23.2, 23.3, 23.4) recognizes the right of both the man and the woman to get married, adding that this shall not be celebrated without the free and full consent of both parties: “The right of men and women of marriageable age to marry and to found a family shall be recognized” (art. 23.2).

The *International Covenant on Economic, Social and Cultural Rights*<sup>4</sup> establishes that marriage must be celebrated with the free consent of the future spouses.

Also, the *Hague Convention on Celebration and Recognition of the Validity of Marriages* from the 14 of March of 1978, establishes in article 11, that a State will only be able to refuse to recognize the validity of a marriage if, according to the law of that State, one of the spouses, at the time of the marriage, among others, had not freely consented to the marriage (art.11.5).

Furthermore, forced marriages have also been defined as a form of slavery by the UN, as is also the case in regional systems of human rights and human trafficking, reflected in the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (September 7, 1956)

In the Convention there is established the commitment of States to prescribe appropriate minimum ages for marriage and to encourage the adoption of a procedure that allows the spouses to freely express their consent to marriage before the competent authority.

## **2.2. The right to a life free from gender violence**

In this context of measures adopted in the fight against the violation of human rights and, specifically, women’s rights, we must highlight two fundamental norms adopted by the UN: The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Declaration on the Elimination of Violence against Women.

According to the CEDAW, adopted in 1979, member States have the obligation to eliminate discrimination against women of all ages, including girls of a young age. The CEDAW intention is to maintain and reinforce a series of women’s rights in order to eradicate the discriminations they suffer—in the area of political rights, family, work,

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<sup>4</sup> Adopted on the 16 of December of 1966: part of the *Article 10.1 Marriage must be entered with the free consent of the future spouses.*

health, education, etc.— (Facio, 2011) and the elimination of harmful cultural practices and stereotypes based on the inferiority of women (article 5).

The Convention is a binding treaty and, therefore, the States members are obliged to ensure that women experience the established rights (Medina Quiroga and Nash Rojas, 2003). This obligation, among others, requires that the States inform, periodically, to the Committee CEDAW<sup>5</sup> about advances in the defense of the expected rights in the Convention. The substantive (rather than formal) equality is a primary objective of CEDAW, which means that legislative and political changes, by themselves, are not sufficient to fulfill the State's obligations under CEDAW. These formal actions should be directed towards the real improvement of women's equality.

Despite the obligatory nature of the CEDAW, the absence of responsible mechanisms has represented a clear lack of consequences in the case of non-compliance. The introduction of the optional CEDAW protocol (adopted in 1999) provided a way to address this lack of consequences, allowing the CEDAW Committee to hear petitions and complaints filed by private agents in the event of State failures to comply with the provisions of the Convention and initiate investigations in cases of serious violations of women's human rights.

The Convention does not explicitly specify forced marriages as a form of violence against women, but with its broad definition of "discrimination against women" it obligates states to modify or repeal the laws or customs that support this practice:

With this Convention, the term "discrimination against women" shall denote any distinction, exclusion or restriction based on sex that has the intention or result of impairing or nullifying the recognition, experience or exercise by women, regardless of their civil status, on the basis of equality between men and women, of fundamental human rights and freedom in the political, economic, social, cultural and civil spheres or in any other sphere (article 1).

Regarding marriage, the CEDAW, in its article 16, provides that States Parties shall take all appropriate measures to eliminate discrimination against women in all matters related to marriage and family relations and, in particular, shall ensure, under equal conditions between men and women: the same right to marry; the same right to freely choose a spouse and enter into marriage only because of their free will and full consent; the same rights and responsibilities during the marriage and on the occasion, of their dissolution; the same rights and responsibilities as parents, whatever their marital status, in matters related to their children; in all cases, the interests of the children will be the primary consideration; the same rights to decide freely and responsibly the number of their children and the interval between births and to have access to information, education and the means

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<sup>5</sup> The Committee for the elimination of discrimination against (CEDAW) is the authority composed by independent experts that oversee the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Web Page available at: <https://www.ohchr.org/sp/hrbodies/cedaw/pages/cedawindex.aspx>

that allow them to exercise these rights; the same rights and responsibilities with respect to the guardianship, custody and adoption of children, or similar institutions whenever these concepts exist in national legislation; in all cases, the interests of the children will be the primary consideration; the same personal rights as husband and wife, including the right to choose a family name, profession and occupation; the same rights to each one of the spouses in the matter of ownership, purchases, management, administration, enjoyment and disposition of goods, both free of charge and for a valuable consideration.

This precept recognizes that states must also prevent and fight against discrimination that occur within the family. From this point of view, it is “the first Convention to extend the realisation of women’s human rights to the private sphere, considering in the same level, the violations of human rights that occur in the public space and those that take place in the private area” (Vargas Gallego, 2014, p. 1).

In the same article 16 it is provided that both women and men have the same right to marry and to freely choose spouses and enter into marriage with free and full consent. “In cases of forced marriages, the concept of “consent” as well as autonomy, is controversial because it is difficult to know to what extent the consent has been full and free or on the contrary has coerced and / or threatened the woman in question” (Torres Rosell, 2015, p. 833).

The *Committee CEDAW* has promoted measures to eradicate the practice of forced marriage with various recommendations: The *General Recommendation No. 19 of the Committee on the elimination of Discrimination against Women*, confirms that:

traditional attitudes according to which women are considered subordinate or attributed stereotyped functions, perpetuate the spread of practices that involve violence or coercion, such as mistreatment in the family, forced marriages or murder due to inadequate skills, attacks with acid and female circumcision. These prejudices and practices sometimes even justify violence against women as a form of protection or domination. The effect of such violence on their physical and mental integrity is to deprive them of the effective enjoyment, exercise and even knowledge of their human rights and fundamental freedom. While this observation emphasizes on real violence or threats of violence, its basic consequences contribute to keeping women subordinate, a low participation in politics and their lower level of education and training as well as employment opportunities.

According to María Angeles Barrère Unzueta (2008, p. 34)., the Recommendation No. 19 of the CEDAW:

Acquires revolutionary overtones since, through it, the juridical-political instances have to admit that there is a phenomenon of violence that cannot be tackled by appealing to a concept of equality referred to the mere exercise of individual rights in reference to a concept of discrimination based on comparative logic (as a mere individualistic rupture of equal treatment).

The concept of discrimination thus enters into the interpretative scheme of patriarchy in which violence against women would be the most obvious expression of structural power relations that are not confrontable with schemes on individual rights [...]. The focus of attention shifts, then, from rights to power and / or to the relations and legal structures of subordination.

Besides, there has been a specific mention regarding marriage, particularly in the *General Recommendation No.21 from the Committee on the elimination of discrimination against women* (1994), about equality within marriage and in the family sphere, in article 16 it is stated that:

1. States shall take all appropriate measures to eliminate discrimination against women in all matters related to marriage and family relations and, in particular, shall ensure, on equal terms with men: a) The right to marry; b) The right to freely choose a spouse and to marry only by their free will and with their full consent.

Lastly, it is important to mention the *General Recommendation No. 35 on gender-based violence against women*,<sup>6</sup> for which there has been an update of the *General Recommendation No. 19*, adopted by the CEDAW Committee in July 2017. This recommendation requires States to repeal “provisions that allow, tolerate or condone forms of gender-based violence against women, including child or forced marriage and other harmful practices” (paragraph 29.c.i).

The *Declaration on the Elimination of Violence against Women*, from December 20, 1993, is the first norm that expressly recognizes that violence against women constitutes a violation of human rights and fundamental freedom and prevents women from having a total or partial enjoyment of such rights and freedoms (right to life, right to equality, right to freedom and security of the person, right to equal protection before the law, right to be free from all forms of discrimination; right to the highest degree of physical and mental health that can be achieved, the right to fair and favorable work conditions, the right not to be subjected to torture, or other cruel, inhuman or degrading treatments or punishment).

The definition of violence against women that is established is broad and although it does not expressly refer to forced marriage, it can be understood that this practice is included in the expression “other traditional practices harmful to women”.

### **3. FORCED MARRIAGES AS A FORM OF GENDER-BASED VIOLENCE**

#### **3.1. The legal instruments of the EU**

The European Union has addressed the problem of forced marriages from a double lens: considering it a form of human trafficking and as a manifestation of gender-based violence.

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<sup>6</sup> Web Page: <http://www.acnur.org/fileadmin/Documentos/BDL/2017/11405.pdf>

The *Charter of Fundamental Rights of the European Union* is the instrument in which the right to non-discrimination based on sex is specifically enshrined, forcing States (Article 23) to guarantee equality between men and women in all the areas. In this regard, the *European Union Guidelines on violence against women and girls and combating all forms of discrimination against them* establish that violence against women and girls includes forced marriage or child marriage perpetrated or tolerated by the State.<sup>7</sup>

The Directive 2012/29/EU *establishing minimum standards on the rights, support and protection of victims of crime* obliges EU Member States to ensure that victims of crime receive the adequate information and support. It includes forced marriage as a form of gender violence and, therefore, it is understood that victims require special support and protection due to the high risk of secondary and repeated victimization, intimidation and reprisals related to this type of violence. It also recognizes special protection measures for victims of human trafficking, “human trafficking, slavery and different forms of harmful practices, such as forced marriages.”

Victims have different needs that must be met before, during and after the criminal process, in order to fully recover from the consequences of the crime committed: the need for recognition and to be treated with respect and dignity, the need to be protected and supported, to access justice and obtain compensation, an effective one for the damages suffered. The fact is though, that many of these needs were not sufficiently covered in the judicial systems of the Member States, so the European Commission presents a legislative package with minimum legal provisions to give them an adequate response in their national legislations (García Rodríguez, 2016).

The *Directive 2011/36/UE of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims* establishes forced marriage as a form of human trafficking as well as the minimum standards that should be applied to the entire European Union in relation to the prevention and fight against it. It also foresees provisions to assist and protect victims and adopts a comprehensive and human rights approach.

According to Carolina Villacampa Estiarte (2011, p. 1), what is most relevant about this Directive guideline is that:

It represents the culmination of a long process of change in the Union’s policy on human trafficking, which began already before the entry and

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<sup>7</sup> *European Union Guidelines on violence against women and girls and combating all forms of discrimination against them*, Annex, 1, p. 14, in which it is established that “Violence against women and girls includes, but is not restricted to, forms of physical, sexual and psychological violence (a) occurring within the family (including prenatal selection based on the sex of the foetus (except where medically necessary) and systematic neglect of infant girls; forced marriage; early marriage [...] (c) violence against women and girls covers all the acts listed above whether or not perpetrated or condoned by the State”.



application of the Treaty of Lisbon. The new approach of the Union calls for a victim-centered treatment, which places the human rights of the victims of trafficking at the epicenter in the treatment of this problem.

The *Directive of Recognition*<sup>8</sup> (2011/95/UE), which defines the people who need international protection and establishes their rights and duties, enumerates persecution for gender reasons among the possible acts of persecution in article 9. It is understood that the concept includes forced marriage, although it is not expressly mentioned in the Directive.

The *Directive on the right to family reunification* (2003/86/EC), which regulates the right of third-country nationals residing in an EU Member State to take their family members, contains specific measures to prevent forced marriage

### **3.2. The Council of Europe: resolutions and Istanbul Convention**

The *Convention for the Protection of Human Rights and Fundamental Freedoms* prohibits the discrimination of rejoicing all rights and freedoms recognized in the treaty (Article 14). The Committee of Ministers from the State members of the Council of Europe, in 2002, approved Recommendation No. 5 on the protection of women against violence. It defines violence against women as any violent act based on gender, including crimes perpetrated in the name of honor, female genital mutilation and other traditional harmful practices, such as forced marriages. States are recommended to review their legislation and policies in order to guarantee women the recognition, enjoyment, exercise and protection of their human rights and fundamental freedoms and to exercise due diligence to prevent, investigate and punish such acts of violence.

The Parliamentary Assembly of the Council of Europe, in 2005, urged the State member to raise the mandatory age in which one can marry to eighteen years with the aim of facilitating the prevention, detection and declaration of nullity of forced marriages, applying justice to people who commit acts aimed at carrying out these celebrations. It is recommended that State members carry out an analysis of forced marriages within their territory to create state strategies and take practical measures.<sup>9</sup>

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<sup>8</sup> Directive 2011/95/UE from the European Parliament and Council, 13th of December 2011, for which there are established relative norms to the requirements for the recognition of third-country nationals or stateless individuals as beneficiaries of international protection, to a fair status for refugees or for people entitled to subsidiary protection and to the content of the protection granted.

<sup>9</sup> “This report highlights the importance of the Resolution of the General Assembly of the United Nations 843 (IX), of 1954, which declares certain customs, old laws and practices regarding marriage and family incompatible with the principles recognized in the Charter of the United Nations and the Universal Declaration of Human Rights, considering that such marriages should not take place in a society like ours where human rights and the rights of the child are protected. That is why the Parliamentary Assembly of the Council of Europe agrees on this point with the considerations approved in the United Nations Convention on consent to marry, the minimum age and marriage registration of the year 1962” (Briones Martínez, 2009, p. 9).

There should also be mention of the *Council of Europe Convention on Action against Trafficking in Human Beings*, which although does not expressly include forced marriage as a form of trafficking, it is still in our interest because it creates the Council of Group of Experts on Action against Trafficking in Human Beings (GRETA), which, in 2018, did in fact publish a report on the Spanish State where it mentions forced marriage. In the GRETA report, it is positively valued that “reforms of criminal legislation have broadened the definition of trafficking to include other forms of exploitation, such as forced marriage” (GRETA, 2018, p.53). With regard to under-age victims, the report emphasizes:

The need to improve their identification and the assistance they receive, paying special attention to unaccompanied and separated minors as well as Romanian minors. The recommended measures include the creation of sufficient admission resources for alleged child victims of trafficking and the training of police, social workers and other actors on how to identify child victims (GRETA, 2018, p. 56).

In April 2009, the Parliamentary Assembly of the Council of Europe adopted a Resolution urging the State members to adapt their national legislation to prohibit and sanction forced marriages and any other form of violation of human rights for gender reasons.

In May 2009, the *Committee on Equal Opportunities for Women and Men* from the Parliamentary Assembly of the Council of Europe approved a draft Resolution on the need to combat the so-called “crimes of honor”. Finally, Resolution 1681 was approved calling on the State members to fight against this practice, due to the fact that there have been cases of crimes of honor in Europe, in communities or descendants of immigrants from countries in which it is conceived as an ancestral custom.<sup>10</sup>

According to *Resolution 1468 (2005) from the Parliamentary Assembly of the Council of Europe on Forced Marriages and Child Marriages*, forced marriage is “the union of two individuals in which at least one of them has not given their free and full consent to marry”.

The *Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention), approved on April seventh 2011, is the first binding instrument on this subject in Europe and is the broadest international treaty regarding the various forms of violence against women. The Convention is the main document that addresses the issue of forced marriages in Europe (European Union Agency for Fundamental Rights, 2014).

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<sup>10</sup> Resolution 1681 (2009), about the urgent necessity to combat the so called crimes of honor.

The importance of this Convention:

Comes from the fact that it is the first legally binding instrument on the subject of violence against women and domestic violence at a European level, and it is the most far-reaching international treaty to face this serious violation of human rights, establishing a zero tolerance with respect to violence against women. This is recognized in the Convention as a violation of human rights and as a form of discrimination, considering the States responsible if they do not respond adequately and effectively, whether due to non-compliance or abandonment of their institutional obligations (Gil Ruiz, 2014: p. 14).

“If we were to summarize its objectives [...] it could be affirmed, using a preamble expression, that the Istanbul Convention (aspires) to create a Europe free of violence against women and domestic violence” (Lousada Arochena, 2014: p. 42).

Unlike other international instruments, the Istanbul Convention explicitly states in article 3.f) “women” includes girls under the age of 18. And the article 4.3 indicate that the implementation of the Convention, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

The definition of violence against women in the Convention is broad and includes, for the first time, in the international arena, economic damage. Violence against women is defined as:

All acts of violence based on gender that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (article 3.a).

Moreover, “domestic violence” is defined as a relationship without convivence: “[...] all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim” (article 3.b).

It should be highlighted that the Istanbul Convention includes, in its article 32, the obligation of the States Parties to establish legislative and other measures related to the civil consequences of forced marriages: “Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without financial or administrative burden placed on the victim” (art. 32 Istanbul Convention).

Article 59.4 specifies the obligation of States parties to articulate legislative and other measures for victims to regain their resident status in case of loss due to forced marriage:

The Parties shall adopt legislative or other measures necessary for victims of forced marriages taken to another country for the purpose of celebrating said marriage, and who lose, as a result, their resident status in the country in which they habitually reside, to recover this statute (art. 59.4. Istanbul Convention).

Article 37 of the *Istanbul Convention*<sup>11</sup> requires the criminalization of the intentional conduct of forcing a person to marry. “Forced marriage is a serious violation of human rights. It not only violates the right to marry, *but it can also* expose the victims to different forms of violence and harm, including violations of the right to a person’s integrity and the deprivation of liberty.” Article 37 on forced marriages provides that:

1. Parties shall adopt the legislative or other measures necessary to criminalize the act, when committed intentionally, to compel an adult or a minor to marry. 2. Parties shall adopt the legislative or other measures necessary to criminalize the act, when committed intentionally, of deceiving an adult or minor to take such individual to the territory of a State other than the one in which the person resides with the intention of forcing said person to marry (Istanbul Convention, 2011).

The Convention explicitly defines the different manifestations of violence against women that must be sanctioned as crimes by the States: psychological violence (article 33); *stalking* (article 34); physical violence (article 35); sexual violence and rape (article 36); forced marriage (article 37); female genital mutilation (article 38); forced abortion and forced sterilisation (article 39); sexual harassment (article 40); aiding or abetting an attempt (article 41).

Besides structural measures, the Convention includes an exhaustive list of obligations to protect women from violence, support victims and criminally prosecute

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<sup>11</sup> “Article 32 – Civil consequences of forced marriages

Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.

Article 37 – Forced marriage

(1) Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.

(2) Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.

Article 59 – Residence status

(4) Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status”

perpetrators. These obligations include: Ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand (article 19); ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment. ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate service (article 20); Provide or arrange for, in an adequate geographical distribution, immediate, short and long-term specialist support services to any victim (article 22); Take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children (article 23); Setting up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity (article 24); Setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims (article 25); provide victims with adequate civil remedies against the perpetrator (article 29); compensations (artículo 30); La introducción de las figuras penales anteriormente mencionadas, que deben ser sancionadas con penas efectivas, proporcionadas y disuasorias (article 45); Immediate response, prevention and protection (article 50); Risk assessment and risk management (article 51) emergencing barring orders (article 52) and restraining or protection orders (article 53); Establish specific protection measures for victims during investigations and judicial processes, including being informed of the development of the investigation, their right to be heard and to present their points of view and concerns, protection of their privacy and image, avoiding contact between victims and aggressors in the seats of the courts, security forces, etc. (article 56);

With regard to asylum applications based on gender, which would include forced marriages, article 60 of the Convention specifies that legislative or other measures necessary shall be adopted in order to ensure that violence against women based on gender can be recognized as a form of persecution within the meaning of article 1. A 82) of the Convention, relative to the status of refugees in 1951 or as a form of serious harm that gives rise to supplementary or subsidiary protection (article 60.1). In article 60.3 it is added that gender-sensitive reception procedures and support services for asylum-seekers should be developed, as well as gender-based guidelines and gender-sensitive asylum procedures, including those related to obtaining refugee status and to the application of international protection (art. 60.3).

The Convention provides for provisions that facilitate extraterritorial application with the aim of combating violence practices (art. 44: through the principle of territoriality, nationality or residence in the territory, of the author or the victim) and is arranged that the applicable sanctions, in addition to being respectful to the principle of proportionality as well as effective and dissuasive of this type of conduct, must be penances that allow extradition. And there is also a catalog of aggravating circumstances applicable to this catalog of crimes.

### 3.3. Normative heterogeneity in the State Members

Forced marriage is criminalized in Belgium,<sup>12</sup> Bulgaria,<sup>13</sup> Croatia,<sup>14</sup> Cyprus,<sup>15</sup> Denmark,<sup>16</sup> Germany,<sup>17</sup> Spain,<sup>18</sup> Luxembourg,<sup>19</sup> Malta,<sup>20</sup> Portugal,<sup>21</sup> Slovenia,<sup>22</sup> Sweden,<sup>23</sup> Austria<sup>24</sup> and United Kingdom.<sup>25</sup>

In the United Kingdom, *the Law which grants Right to found a Family* of 1996 (modified by Article 120 regarding the *Law of Behavior, Crime and Antisocial Crime* of 2014) also criminalizes the violation of a protection order on forced marriage.

In Spain, Germany and Sweden, the regulations that penalize forced marriage include, within their scope, the criminal responsibility of whoever forces another person to leave the country (Spain) and/or enter the country (Germany) or any other country (Sweden) for the purpose of forcing a person to marry.

The provisions of the civil law in all State members establish clear conditions to guarantee the validity of marriages (for example, specific age thresholds and the ability to give fully informed consent).

The national civil laws of the State members often declare the nullity of a marriage celebrated when the will of at least one of the parties is vitiated by a defect of consent. However, the circumstances that invalidate the consent vary according to said State members (European Union Agency for Fundamental Rights, 2014). The validity of a marriage can be affected by the lack of consent derived from physical coercion (including threats, physical violence, sexual violence and kidnapping) or psychological coercion (including pressure of various kinds, emotional blackmail, the confinement and confiscation of official documents) (European Union Agency for Fundamental Rights, 2014), or the lack of capacity to act as one or both parties, whether they are not of minimum age or due to psychosocial disabilities.

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<sup>12</sup> Article 391 Criminal Code.

<sup>13</sup> Article 177 Criminal Code.

<sup>14</sup> Article 169 Criminal Code.

<sup>15</sup> Chapter 154 Criminal Code.

<sup>16</sup> Section 260 Criminal Code.

<sup>17</sup> Section 237 Criminal Code.

<sup>18</sup> Article 172 bis Criminal Code.

<sup>19</sup> Article 387 Criminal Code.

<sup>20</sup> Article 251G Criminal Code.

<sup>21</sup> Article 254-B Criminal Code.

<sup>22</sup> Article 132.a Criminal Code.

<sup>23</sup> Chapter 4 Criminal Code.

<sup>24</sup> Article 106a Criminal Code.

<sup>25</sup> The Law of Behavior, Crime and Antisocial Crime and United Kingdom's police forces of 2014, section 121 (England and Wales) and 122 (Scotland); Section 16 of the Law on trafficking and exploitation of (criminal justice and support for victims) (North of Ireland) 2015 (North of Ireland).

Even though not all State members penalize forced marriages, the majority (with the exception of Croatia, Finland, Hungary and Ireland) establish specific civil rights norms that grant the possibility that the spouses refuse a marriage celebrated under duress and / or coercion, threat and violence (Psaila et al., 2016).

With regard to age, State members are also bound by international instruments that prohibit child marriage. For example, in article 2 of the *Convention on Marriage Consent*, the minimum age for marriage and the marriage registry appeals to State parties to specify in their national legislation the minimum age for marriage. Thus, national civil law regulations stipulate that a marriage cannot be celebrated by a person under the age of 18 and that only in specific cases and under certain conditions (for example, the consent of the parents and/or the authorization of a judge), minors under 18 can get married. In most of the State members where there is such an exception, it only applies to children between 16 and 18 years of age.

In a number of State members, there have been implemented policies specifically addressing forced marriage, including policies to assist victims, prevention and awareness-raising. Germany, Denmark, Finland, Ireland, Latvia, the Netherlands, Poland, Romania, Spain, Sweden and United Kingdom are the states that have developed public policies (Psaila et al., 2016).

Initiatives in support of victims include activities aimed at providing adequate help and psychological assistance to young women, (for example in educational centers and social services). Such actions include public help-lines such as the one created by the Administrative Council of the Östergötland County<sup>26</sup> or hotlines that provide advice to victims and professionals working in cases of forced marriage such as the one created by the “Forced Marriage Unit” (FMU) in the United Kingdom.

In Denmark, they have carried out activities focused on prevention, including the training of professionals from the private and public sectors, support and advice to mothers and fathers and their children (especially from ethnic minorities) and awareness campaigns aimed at religious communities. In Germany they have developed information campaigns, seminars and conferences to initiate a public debate, raise awareness and educate society in general about forced marriage.<sup>27</sup>

#### 4. CONCLUSIONS

Forced marriage is a crime condemned by the international and European human rights law: it violates the right to freely marry and the right to live a life free of gender violence.

<sup>26</sup> Danish ‘National Strategy against Honour-related Conflicts - a targeted effort against honour related conflicts’ of the Ministry for Children, Equal Treatment, Integration and Social Affairs. See Administrative County board for Östergötland final report “Married against their will”, 2015.

<sup>27</sup> For example, the campaign ‘their liberty, their honor’, developed by the Ministry of Integration in North Rhine-Westphalia (Germany) in cooperation with several migrant organizations.

Forced marriage is recognized as a form of violation of human rights, discrimination against women and children (young girls) and a form of gender-based violence (GBV) which women and young girls suffer. In numerous international treaties and in other supranational documents, this practice is perceived as a violation against people's dignity and as an attempt against fundamental rights such as freedom and equality.

Forced marriages is a form of gender-based violence, as a practice that constitutes another form of violence against women in patriarchal societies where women have less value and are considered as an object of property of their husbands and families (Igareda González, 2017). It is true that forced marriages occur both against women and men, but the number of female victims is disproportionately higher, since it is estimated that around 85 per cent of victims of forced marriages are women and girls (Heaton, McCallum and Jogi, 2009).

The Istanbul Convention (2011), constitutes the first binding instrument on this subject in Europe and is the broadest international treaty in relation to the various forms of violence against women. The Convention constitutes the main document that addresses the issue of forced marriages in Europe.

Definitions and interpretations of forced marriages in criminal provisions vary between State members but contain several common elements, such as the concepts of force, violence or coercion (Belgium, Cyprus, Denmark, Germany, Malta, Portugal, Eslovenia, Spain, Sweden and United Kingdom).

In other State members, forced marriage can be punished only as long as it constitutes another crime, such as rape, attempted rape, physical violence, psychological or sexual violence, injury, ill-treatment, assault, illegal detention, violation of freedom and integrity, psychological coercion, sexual coercion, kidnapping, crimes against people, sexual integrity or crime of honor (European Union Agency for Fundamental Rights, 2014).

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