

Forced marriages in Council of Europe member states

A comparative study of legislation and political initiatives

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Summary

This study sets out to examine forced marriages in 28 member states of the Council of Europe, and more specifically to consider the legislation potentially applicable to such unions, as well as exploring policy initiatives to combat the phenomenon. It attempts to uncover the dynamics of forced marriages and the issues involved, with particular attention to the concepts of exchange of consent and the meeting of minds. Consent by the partners in a marriage is apparent both from the psychological or internal inclination that informs

the decision whether or not to commit oneself, and from externalised or declared agreement expressed in a form required by the law and in such a manner that the other party can take cognisance of it.

The general hypothesis is that systems of civil and criminal law and the rules of private international law are in need of reform in the light of internationally recognised human rights standards. The study has produced a body of information to support the case for new policies, schemes and

initiatives to prevent forced marriages.

Under Recommendation Rec (2002) 5 of the Council of Europe Committee of Ministers to member states on the protection of women against violence, forced marriage should be regarded as an act of violence and should cease to be practised in Europe. In the words of the recommendation: "Member states should prohibit forced marriages concluded without the consent of the persons concerned."

Forced marriage: a problem of definition

"Forced marriage" is an umbrella term covering marriage as slavery, arranged marriage, traditional marriage, marriage for reasons of custom, expediency or perceived respectability, child marriage, early marriage, fictitious, bogus or sham marriage, marriage of convenience, unconsummated marriage, putative marriage, marriage to acquire nationality and undesirable marriage – in all of which the concept of consent to marriage is at issue. Among the types of marriage listed, which can assume their particular characteristics in the period between marriage promise and wedding, there is considerable scope for

overlap – hence the difficulty of defining precisely what is meant by "forced marriage".

It is not a term that has explicit legal content and it is defined differently in different countries. This is probably because, in cases other than those where there is actual physical proof that a person's freedom of consent has been denied by physical force or violence – eliminating any doubt that the marriage was forced – it is not always easy to ascertain the state of mind behind the explicit content of the marriage contract. The fact is that the intent expressed when a marriage is concluded is more than

simply the terms used to express it: it depends on all the circumstances in which it is expressed. Anxiety and fear can rule out all thought of resistance, without there being any genuine consent. Similarly it is not always possible to supply proof of the type of emotional threats that can render individuals vulnerable and prevent them from resisting a marriage. Study of actual cases reveals a too systematic tendency on the part of courts to overlook the possibility that marriages contracted in order to circumvent immigration rules, ie without any genuine marital intent, may also be forced marriages.

Quantitative data: estimates only

None of the Council of Europe countries has carried out a quantitative survey to determine the sociological realities of forced marriages. At best we can draw on a few small-scale

studies and anecdotal information. From these sources it is clear that forced marriage is practised in many regions of the world and it mainly affects the world's poorest people.

Marriage under the age of 18, or at a very early age, continues in many parts of the world, suggesting that a high proportion of such marriages are forced ones. In most cases it is girls



who are forced into marriage and the practice is commoner in Africa and Asia than in the industrialised countries, where young people are marrying later and later, between the ages of 25 and 30. Countries in Europe tend to associate forced marriage with migratory flows and the difficulties that immigrant families experience in becoming integrated.

It would thus be extremely useful to produce a socio-demographic and cultural profile of individuals who fear, or enter into, forced marriages in each of the Council of Europe member countries. This would help us to assess the incidence of forced marriage and understand its various dimensions, to identify the regions where it is practised and to develop

more pertinent responses to the problem. We could look more closely not only at economic factors but also at political crises and armed conflicts that could have an aggravating effect inasmuch as they create widespread insecurity and vulnerability.

Actual cases: how media interest can generate awareness

The study includes summary accounts of several cases that received media coverage and heightened public awareness of the prob-

lem. Considering actual cases and exchanging experience on the ground is very useful for while the phenomenon of forced marriage is not rare, its

characteristics, causes and consequences differ.

The many related factors behind forced marriage

The factors that underlie forced marriage differ according to whether we look at countries where the practice is perpetuated by rural, often poor families, or at European Union countries where it involves families of immigrant origin. In the first set of countries, the causes are mostly to do with cultural pressures such as the

importance attached to honour and virginity, security in old age, a desire to keep financial assets in the family or concern to reinforce parental authority. In the second, the driving forces may be a wish to prevent children from becoming "Europeanised", or a need to reaffirm identity, perpetuate the migratory process or repay a

debt to one's own community. Additional factors may include deteriorating relations between the sexes, the rise of religious fundamentalism, the impact of urban social policies, difficulties with regard to marriage and sexuality, and a concern to prevent one's children from entering into a mixed marriage.

The collective and individual consequences of forced marriage

For both boys and girls, forced marriage has psychological, emotional, medical, financial and legal consequences. As well as financial

and logistic help, individuals who have undergone forced marriage need freedom to exercise their economic, social and legal rights. They

need enabling to defend their human rights and basic freedoms.

Partial responses in law, and the limits of the legal approach

Considered together, the relevant international legal instruments suggest the emergence in the different member countries of a degree of standardisation around a straightforward concept – that everyone has the right to marry and found a family, that child marriage (ie where a spouse is not yet of marriageable age) cannot be permitted and that all marriages require the free and full consent of the future spouses, expressed in person before a competent authority in the presence of witnesses. Yet it would be wrong to assume that this in itself can effectively guarantee freedom and choice with regard to matrimony.

All the Council of Europe member states have signed and ratified at least two international agreements on forced marriage. Absence of duress

and respect for marital capacity have become for the majority of these countries – notably by virtue of their commitment to the principles of international instruments for the protection of human rights and fundamental freedoms – the key benchmarks for assessing individuals' behaviour in family relationships. Freedom to marry, independent choice, and the rejection of early marriage are clearly essential, and anything that compromises those principles must be rejected.

Apart from this international level of protection, the study looks at how marriage is regulated by the domestic laws of each country and in private international law.

There is intense debate about the choice-of-law rules that should apply to the contracting of marriages. A dis-

tinction is drawn in this regard between substantive and formal requirements. In settling choice-of-law questions concerning the substantive requirements for marriage, some countries give preference to national law while others apply the law of the country of residence. A third group either allows spouses to choose between their own national laws and those of their country of residence or determines the law applicable according to the circumstances of the case. With regard to formal requirements, most countries opt for the law of the state where the marriage is contracted.

Research has shown the choice-of-law rule that gives precedence to spouses' national legal systems to be unsatisfactory. Lawyers have suggested that a system which gives



precedence to the law of the country of residence is a better solution in terms of the principle of equality. In many European countries, families from immigrant backgrounds, and particularly women whose national family-law systems contain provisions discriminating against them, prefer to see the law of the country of residence applied, considering that it affords them greater protection. In the eyes of some jurists, however, this option amounts to the compulsory integration of foreign communities. It is justifiable in the case of families who have lived for many years in a foreign country, particularly if there is a connection of proximity between a disputed situation and the local legal system. However, it does nothing about the problem of recognition abroad for legal steps or decisions taken under legislation inconsistent with the parties' own national laws. Opting to let the parties themselves choose the law that will govern their family relationship applies the principle of independent free will, and it is a solution that recognises legal pluralism and shows greater respect for special features of foreign legal systems. A further solution is to leave the choice of applicable law to the courts. Different courts may sometimes use different choice-of-law criteria to reinforce the formal validity of a legal contract.

The question here is what choice-of-law solution would be most appropriate in terms of prevention, ie providing universal protection against unwanted marriage. While giving people the right to choose might seem the best solution, particularly for families who maintain close ties with their country of origin, the current preference among legal theorists is for application of the law of the country of usual residence, as probably affording greater protection. It would also seem to promote observance of the observance of undertakings with regard to human rights and fundamental freedoms – provided that appropriate provisions exist in the family-law systems of the European countries concerned.

The study sets out the rules on marriage in all the Council of Europe member countries reviewed. This covers: marital capacity and exemp-

tion from the age requirement, parental or legal permission for minors to marry, the role of the courts where parental permission is refused, the requirement of consent by the spouses, formal requirements, grounds for annulment and procedural stipulations. The findings suggest that all states should be encouraged to amend their legislation by making 18 years the minimum legal age for marriage. To do so would be in accordance with international undertakings that states have given. It would also remove a measure of gender discrimination in those legal systems that retain different marriageable ages for boys and girls. Another point to emerge is the urgent need for all countries to keep registers of births, deaths and marriages, so that people's dates of birth and marriage dates are known. It would also seem necessary to close off the option of marriage by proxy, which is currently still available in many countries. Finally, governments should be encouraged to adopt the approach taken by Norway in Act 47 of 4 July 1991 concerning marriage, under which either spouse may apply to the courts to have a marriage annulled if he or she was forced into it.

The research also highlighted the ineffectiveness of legislation – in terms of its implementation rather than its content. Victims fail to report abuse, either because they are ignorant of the law or because they believe that family problems should be solved within the family. A further point is that, under most countries' legal systems, applications for annulment on the grounds of breach of marital-capacity rules, absence of consent or vitiated consent can be made only by the victim, and there is a very short limitation period. Forced marriages also raise serious questions about the effectiveness of penalties when the rules are broken.

It is clear from a review of criminal law that few countries have a specific offence of forced marriage. In most countries forced marriage is punishable under ordinary law offences. In each case the penalties have regard to the seriousness of any aggravating circumstances – whether the victim was a minor, whether the

offence was committed against a family member, the nature of the relationship between aggressor and victim and the seriousness of the act itself (whether it involved violence, threat, unlawful imprisonment, use of objects and so on). These various provisions in criminal law provide a basis on which to punish forced marriage – that is, once the marriage has been contracted. Rape within marriage is not yet recognised under all legal systems. Some countries have introduced provisions that can be used to prosecute parents for abetting the rape of a minor. The next question that arises has to do with bringing criminal proceedings, and the rules here differ widely from country to country: in some cases initiation of proceedings depends on the victim making a complaint, in others the public prosecution service may take the first step. The legislation in some countries stipulates that the public prosecution service cannot take any action unless the victim has made a complaint. The law may, however, allow the prosecution service to take investigative action or place a suspect in preventive detention so that he or she does not abscond or material evidence go missing. In other legal systems the public prosecution service has an automatic right to take action if it is deemed to be in the public interest. In some countries a complaint from the victim is not needed for criminal proceedings to be initiated: under ordinary law any member of the public can bring a matter before the courts (although, as a rule, proceedings are initiated by the police). This is very useful in the context of forced marriages as it enables relatives of a victim of forced marriage to sound the alert and have criminal proceedings instituted.

In practice, in most countries, very few cases are reported. Victims are afraid to go to the police, or feel ashamed, or have little confidence in the authorities. The point is made in the information from many countries that when victims do make a complaint, perpetrators often receive only the minimum penalty, prison sentences being rare or relatively short.



Policies, programmes and initiatives to combat forced marriage

The study looks at the various policy approaches to personal protection in the different countries, covering child welfare support measures, occupancy and barring orders, orders preventing abuse within families, and migration policy measures including conditions for family reunification, efforts to combat marriages of convenience, and procedures for acquiring the nationality of the spouse.

In principle, these protection measures are uncontroversial. They are based, in every country, on laws which have a twofold justification: both as rules for immediate application with the self-evident aim of protecting minors and the human person, and as the expression of international undertakings. Yet obstacles can arise and limit their preventive effect with regard to forced marriages. Firstly the courts, in their dealings with families and particularly families of immigrant origin, may have limited understanding of other types of family structure and other approaches to dispute settlement within families. Secondly people's relationship with the law differs from one society to another. And lastly different societies interpret children's interests in different ways. So are there any general principles applicable with respect to family rights? There is a dual problem here, involving both the compatibility of different legal systems and the cohabitation of different cultural systems. Taking in people from different backgrounds and respecting what makes them distinct does not mean importing practices that compromise basic human rights. Nonetheless, legal opinions differ on this question and sometimes end up defending practices which would not be permissible under the positive law of countries of origin, or which would be subject to restrictions. All this points up just what an important role the law can play as a tool for integration.

It is clear that there have been fresh developments in national law on foreign nationals. Belgium and France have taken specific measures to combat marriages of convenience, and French law contains a number of provisions directed against forced marriage. It would seem that neither extending the required periods of proven cohabitation nor giving courts the power to decide if a cohabitation requirement has been met is likely to counter the problem of marriages of convenience in an effective way. If some people treat marriage as a mere lever for changing their nationality, it might seem sufficient, in order to prevent marriages of convenience, to break the link between what is a voluntary step under family law and the integration measure currently associated with it. To do so, however, would run counter to the principles of the European Convention on Human Rights and disregards the question of integrating people of immigrant origin. Is the law on aliens usable to prevent marriages concluded under duress? The answer is not straightforward. Measures taken by governments to combat sham marriages ought not to result in excessive suspicion being directed at marriages involving foreigners, and particularly mixed marriages. Nor, however, should it be forgotten that fraud in the form of sham marriage can conceal forced marriage. As well as individual cases of marriage fraud, there are organised networks that will set up marriages of convenience for foreigners unlawfully resident in European countries who are prepared to pay large sums of money – the women being purchased or forced into the union. It is to be hoped that the new requirement in France that the registrar interview intending spouses in order to verify marital intent will have some effect in combating both marriages of convenience and forced marriages.

The study concludes by reviewing some of the facilities that can help victims of forced marriages, including advice centres, shelters and law centres. It looks, too, at measures taken among ethnic communities, not only under “integration agreements” but also involving action at community, school and club level as well as police initiatives, training courses, information provision, audiovisual projects and research programmes. Some countries have provided specific funding, introduced support measures and set up telephone help lines. More rarely, efforts have been directed at those responsible for forced marriages. The study suggests that in all such activities a networked approach is the most appropriate for helping people who have been forced into marriage.

The concept of a summary of policies, schemes and initiatives suggesting action in one specific direction is, at this stage, no more than that – an idea or rather ambition. It is not a reality. The fact is that, through the combined effects of demographic, economic, historical, political and social variables, each country has developed its own particular characteristics – hence the range of approaches described. Investigating the issue of forced marriage involves questioning the whole mythic edifice of opposition and complementarity between the sexes as well as the basic concepts of family and society and different perceptions of them. Preventing and combating forced marriage is nonetheless essential. It is likely that solutions to the problem lie both in universally applicable institutions and in more specialised projects. The study demonstrates that action proposals in themselves are not enough. Resources also need to be made available for assessing the effectiveness of any measures taken.



Proposed recommendations

The study suggests that action is needed on a number of fronts:

Information, awareness raising, education and training

- Women and children should be better informed about their rights with regard to preventing and opposing forced marriages.
- Information projects need to be developed for both girls and boys at school.
- There is a need for awareness-raising among public prosecutors, diplomatic and consular staff, magistrates, police officers and social workers in relation to forced marriages and the legal, cultural and family problems that women encounter.
- Training programmes about women's civil rights need to be developed for those professionally in contact with the question.

Legal reforms

- Treaties that ignore the constitutional principle of male-female equality should be denounced.
- Where there is a choice of law, preference should be given to the law of the normal place of resi-

dence so as to avoid making women from immigrant backgrounds subject to discrimination with regard to personal status.

- Governments should be encouraged to amend their legislation to make 18 the minimum marriageable age.
- A recommendation should be made to governments to include in their criminal-law provisions a specific offence of "forced marriage", with penalties reflecting aggravating circumstances.
- Limitation periods for the commencement of civil or criminal proceedings should be reviewed.

Policies and initiatives to help those involved in forced-marriage situations

- Contact points need to be developed where people can report their experiences and receive assistance, support and advice.
- Special accommodation needs to be made available, with an emphasis on respecting personal independence and providing reception centres for girls who find themselves in emergency situations for whatever reason.

- Women's-rights associations should be supported.
- Inter-association networks need financial support.
- Specific initiatives for women need developing as part of municipal policy and policies for integration.
- The gender dimension should be incorporated into policy-making on ordinary law.
- Action programmes targeting those responsible for forced marriages need to be developed.
- Resources are required to assess the effectiveness of the proposed policies and initiatives.

Resources for research into the reality of forced marriages

- A working party should be set up to conduct a European-level study of forced marriages.
The aims would be:
 - to raise awareness of the problems experienced by victims of forced marriage and their families;
 - to examine legal practices, and policies and approaches that have been introduced, as well as the roles of those involved in forced-marriage situations.

Introduction

The word “marriage” signifies the union between cohabiting spouses. It also designates the legal contract determining the conditions on which that status is acquired and the rights and duties that go with it. From the jurist’s point of view, the legal contract creating the marital bond is particularly important, as are certain aspects of the condition of marriage.

The classical jurist Modestinus famously defined marriage as “the union of man and woman, a lifelong community, the sharing of that which is subject to human law and that which is subject to divine law”. The same definition, which occurs in the Digest [the key text of Roman law] (23, 2, 1) and in the Institutes of the Emperor Justinian (1, 9, 1), was used in medieval canon law and subsequently became widespread in the Christianised West and colonised America.

Whether family-centred or couple-centred, and whether reflecting religious or secular commitment, the condition of marriage can cover many different circumstances:¹ it occupies an interface between various sets of rules, being addressed not only by the positive law of states, but also by religious law, systems of morality, tradition and social rules of acceptable behaviour. It is also

defined by family structure, whether the family is understood in the extended sense or the restricted sense of couple and non-adult children. Although, for a long time, certain societies attached no importance to the consent of spouses as a manifestation of their wishes (marriages being imposed on them by others)² the individuals who were to be married eventually acquired a greater say – with variations between different places and different eras – in matrimonial choice.³ Nonetheless, marriages continue to take place without the consent of spouses. In certain societies, marriage is subject to imperatives of a higher order than the spouses’ individual wishes, which results in family, or indeed state, control mechanisms, and prohibitions on

marriage that are imposed for social reasons.

This study sets out to examine those marriages that are termed “forced marriages”, and more specifically to consider the civil and/or criminal law applicable to such unions, as well as exploring policy initiatives that have been taken to combat the phenomenon. The general hypothesis is that civil and criminal law needs to be reviewed in the light of internationally recognised standards for human rights, and that consideration must be given to the impact of forced marriages on women, husbands, families and society as a whole. Those most affected by forced marriage would seem to be women and – in wealthy industrialised countries – women from immigrant backgrounds. Information is required to substantiate the case for urgent legal reforms, as well as policies, programmes and initiatives to prevent forced marriages or at least make them less common and thus create a basis for further effective action. Forced marriage is a form of violence and, as such, it should have no place either in Europe or elsewhere in the world.

Council of Europe Recommendation Rec (2002) 5 includes forced marriage in a list of acts of violence. It refers to “violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape between spouses, regular or occasional partners or cohabitants, crimes committed in the name of

1. See J. Boswell, *Same-Sex Unions in Premodern Europe*, Random House, 1995. In many societies the word “marriage” signifies both the marriage ceremony and long-term married life: see J. Gaudemet, *Le mariage en Occident*, Paris, Cerf, 1987, p. 14, and M. Delmas-Marty and C. Labrusse-Riou, *Le mariage et le divorce*, Paris, Presses Universitaires de France, 1978, p. 17.

2. Roman law refers in this regard to *adfectio maritalis*. See the passage in Demosthenes’ in his speech against Neaira: “For this is what living with a woman in marriage is: for a man to beget children by her and present his sons to his fellow clansmen and members of his district and to give daughters as his own in marriage to their husbands. Mistresses (*hetairas*) we have for our pleasure, concubines (*pallakas*) for daily service to our bodies, but wives for the procreation of legitimate children and to be faithful guardians of the household.” See also J. Boswell, *op. cit.*

3. J.L. Flandrin, in *Les amours paysannes*, Paris, Gallimard, 1975, demonstrates that from the 17th century onwards, marriage partners were self-selecting and enjoyed loving relations. M. Segalen, in *Mari et femme dans la société paysanne*, Paris, Flammarion, 1980, p. 20, warns against confusing love and sexuality. It was essentially in the 20th century that marriages started being concluded without any intervention from outside parties: see M. Gauthier, *Amours d’autrefois, témoignages*, La Crèche, 1998, and M. Valière, *Amours paysannes*, Mougou, Geste édition, 1996.



honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages".⁴ It also makes a connection between forced marriage and the notion of consent: "Member states should prohibit forced marriages concluded without the consent of the persons concerned."

Similarly, the Third European Ministerial Conference on Equality between Women and Men (Rome, 21 and 22 October 1993) addressed the subject of violence against women as an obstacle to recognition of, and respect for, human dignity and integrity. The ministers forcefully condemned all forms of violence against women as violations of individual human rights. Combating such violence thus became one of the Council of Europe's priorities.

This was emphasised in the final declaration of the Second Summit of Heads of State and Government of the Council of Europe (10 and 11 October 1997), in which the national leaders affirmed their "determination to combat violence against women and all forms of sexual exploitation of women".

With regard to forced marriages, as in many other fields, it is important to note that images and stereotypes continue to distort people's thinking. Where forced marriages involve women from immigrant backgrounds, cultural relativism can sometimes express itself in a sort of reverence for difference that has the reductive effect of disallowing any movement. It is then but a short and tempting step to the notion that people "of immigrant origin" are more resistant to certain principles such as gender equality and individual freedoms. Jurists, too, are of their time. Their task is doubtless to steer marriage towards ends that they regard as just, which means analysing the mechanisms at work in forced

marriage and looking especially closely at mutuality of consent. For the spouses' consent is both a mental process, a psychological or internal commitment to going ahead with the marriage, and the external expression of that, in a form required by law and of a kind that the other party can take cognisance of.

"Forced marriage" is an umbrella term covering marriage as slavery, arranged marriage, traditional marriage, marriage for reasons of custom, expediency or perceived respectability, child marriage, early marriage, fictitious, bogus or sham marriage, marriage of convenience, unconsummated marriage, putative marriage, marriage to acquire nationality and undesirable marriage – in all of which the concept of consent to marriage is at issue. Among the types of marriage we have listed, which may only assume their various characteristics in the period between marriage promise and wedding, there is considerable scope for overlap – hence the difficulty of defining precisely what is meant by "forced marriage".

In the interests of producing a better definition we shall begin by looking at these various aspects and how they interconnect. We shall also attempt to offer an overview of forced marriage. Is it a practice that can be quantified? On what is it based? What is its psychological, emotional, material and legal impact on the people involved? In considering the problem it is obviously important to establish whether forced marriage occurs in only a few isolated and much-reported cases or whether, in fact, it is widespread and growing. Moreover, the many justifications put forward for such unions may explain the difficulties encountered in trying to stem the practice. Clearly, attempting to address the causes of a phenomenon when they are multiple, and laden with real and serious consequences, is a highly complex task.

The next section of the study considers forced marriage chiefly from a legal perspective. What international legal instruments are applicable? Under private international law, what is the effect of such unions, which fly in the face of the major principles enshrined in the treaties protecting human rights and fundamental

freedoms? What specific legal measures have European countries taken to deal with forced marriages? Here we will look at civil and criminal law, laws governing foreign nationals, and protective measures. The issue is a broad, complex and technical one encompassing various questions to do with implementing different bodies of law governing families' status. Administrative and judicial authorities dealing with family disputes may, for example, be required to apply rules that differ considerably from their own domestic legislation, or may have to decide how domestic law should respond to institutions or practices that are unfamiliar or unacceptable from their own institutional point of view.

We will conclude by considering policies, schemes and initiatives introduced in response to the problems that forced marriages raise. What policies have been implemented to provide counselling services, shelter or accommodation, support, education, training and research? What social, legal and political agencies may have a helpful role to play?

All these issues will be addressed from a comparative, European perspective. Comparing approaches to the problem in different legal, cultural and political contexts can only enrich our thinking. There is no doubt that forced marriage is a topical issue, and European countries are caught in the trap experienced by all democratic societies of the contradiction between tolerance and the rejection of intolerance. Leaving people free to organise their own family relationships can lead to forms of oppression that are unacceptable. The issue of forced marriage highlights a conflict about societies' fundamental principles, and places us in a quandary inasmuch as the liberalism of democratic countries is possible only on the basis of an implicit consensus around certain founding values including freedom to consent to marriage, the primacy of the child's interests over those of parental authority, and equality between the sexes. It is as true today as it ever was that the family is not an institution that people can be left to organise as they see fit. Even though not all legal and

4. Recommendation Rec(2002)5 of the Committee of Ministers to the member states on the protection of women against violence, adopted on 30 April 2002, defines "violence against women" as "any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life".



political systems are based on the same theoretical and philosophical approaches, these ideas ought to serve as a starting point for a number of recommendations to address the problem of forced marriages.

This study, which began in October 2004, is a survey of the situation with regard to forced marriages in the following 28 countries: Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

More circumstantial evidence, taking account of migratory flows

into Europe, has also been gathered in relation to India, Pakistan and Morocco.

The research was carried out using a common epistemological framework for the different countries, insofar as it was agreed that available information about forced marriages would be obtained through exchanges of letters and from member states' representatives on the CDEG. The material collected differed from country to country: some countries supplied information on the definition of marriage while others submitted the relevant provisions of their civil or criminal codes or code of private international law, and others highlighted various policy initiatives. The next step, while attempting to take a coordinated overall approach,

was to collect data via semi-structured interviews with representatives of social, legal and political agencies – and more information was gathered in this way from some countries than from others. The report is not, therefore, exhaustive but does set out to offer a fairly broad analysis. It has no ambitions, however, to be a work of sociology. At most, it hopes to unravel the mysteries surrounding forced marriage, to examine the problems closely and to suggest a hierarchy of principles on which solutions might be built. Its primary purpose is to point the way to the future and to recommend avenues for further study.

Forced marriage: a problem of definition

Before proposing a definition of “forced marriage” we need to explain what we understand by the component terms “marriage” and “forced”.

Professor Jean Carbonnier wrote of marriage as a “union of the spirit before that of the flesh”.¹ Selecting a definition is not straightforward, for two reasons: firstly because the social and moral dimensions of marriage are not easily contained within a legal definition, and secondly because of the dual meaning of “marriage”, designating both the immediate act that initiates the state of being married, and the state itself as a continuing condition. In Collins' English Dictionary the definitions of the adjective “forced” include “done because of force”, “compulsory” and “caused by an external agency”.

Recent research in the fields of history, demography and ethnology is beginning to teach us more about marriage down the ages, in different places and social settings. Various questions can now be answered about who marries whom, at what age people marry and what the functions of marriage are. It is also possible to identify changes that have taken place and potential new developments in society, including new models of family and parenthood. Surely we have come a long way from the marriage described in *The Princess of Cleves*, in which Monsieur de

Cleves dies because he could not obtain from his wife more than the *amicitia* prescribed by theologians, and the Princess, having refused the Duc de Nemours and retired to a convent, also dies – of despair that marriage necessarily means the destruction of passion.² There is a persistent notion that people married, in days gone by, because specific interests were at stake, and marriages were made by one's parents, whereas nowadays people marry for love and enjoy free choice. Yet parental tyranny still exists, as do social problems rooted in the yoke of forced marriage. In some situations there is still a long way to go to the ideal of marriage as an alliance of two free wills, independent of any procreative function or concern to found a household. People's image of marriage is, in fact, far removed from reality and actual experience. Marriage remains an act that has implications for the entire community, both in the forms it takes and in its “biological” future.

As noted in the report on the first staff training initiative in Seine-Saint-Denis (France) on the prevention of forced marriage, organised marriages were, for centuries, the norm in Europe. “Scenarios ranged in ancient times from abduction as a basis for founding societies and unions (the case of the Sabine women), through

the training for marriage, by the entourages of victorious princes, of princesses of conquered regions (Racine), legally codified negotiations about children under 15 years of age with a view to uniting families, houses and estates (throughout the Middle Ages), the practice of old men choosing very young brides (in the 17th, 18th and 19th centuries), to marriage as reparation (described in the Bible). These were marriages contracted following abduction, rape or kidnapping, which were seen as responses to necessity: unions that were indissoluble but driven by the imperative of early and abundant child-bearing.”³

Today, the new circumstances of our lives and accompanying changes of outlook certainly make it easier for people to exercise freedom with regard to marriage, and the image of freedom is partly accurate – but only partly. It is also a distorted image, for some of the practices described above are still current.

Of course, not all nations and not all individuals share the same conception of marriage or regard it as the same institution in terms of its content or form. The first difficulty we encounter is therefore that of defining “forced marriage”.

1. Jean Carbonnier, *Terre et ciel dans le mariage*, Mélanges Ripert, 1950.

2. Christian Biet, *Droit et fiction: la représentation du mariage dans la Princesse de Clèves*, Littératures classiques, annual supplement, Klincksieck, 1990.

3. See “Prévention de la pratique des mariages forcés - Première initiative de formation des personnels du service social en faveur des élèves en Seine Saint-Denis”, report by the Délégation régionale aux droits des femmes et à l'égalité, p. 6.



Marriage as slavery: a multiplicity of situations

A report on trafficking of women for marriage, domestic work and prostitution highlighted certain features of what might be termed “enslavement” marriages:

“The woman has been married in return for some form of payment (not necessarily monetary) and has no control over her own life (particularly her sex life); she has not been consulted on the choice of husband and is not entitled to refuse; she is under age; she has no control over her pregnancies; her authority as a parent is reduced; she is at risk of rape, assault or murder, with no possibility of

recourse for protection to the law or to society generally; she is subject to her husband's arbitrary authority and to constant humiliation; she is financially dependent; she is intimidated and submissive with regard to violent treatment, divorce and financial dependence; she is not entitled to leave the matrimonial home and faces threats if she does so.”⁴

4. Marjan Wijers and Lin Lap-Chew, *Trafficking in women, Forced Labour and Slavery-like Practices in Marriage, Domestic labour and Prostitution*, Preliminary Report, Foundation Against Trafficking in Women, Utrecht, October 1996.

This description, which covers a number of very different marriage situations, is not conducive to academic objectivity and we need to examine it with a certain degree of theory-based caution. At best, we can identify problems posed by the terminology, and all we can say clearly is that forced marriage cannot be defined without reference to the definition of consent. The existence of consent to the creation of the matrimonial bond depends upon consistency between two expressions of intent, inner and declared.

Arranged marriage, traditional marriage and marriage for reasons of custom, expediency or perceived respectability: the gap between interior and declared intent

Marriage, in many countries, involves “marriage brokering”, the system whereby a matchmaker or go-between makes contact between two people who wish to marry.

“Purely in the context of traditional marriage, it is the norm in Vietnam for marriages to be arranged, depending, that is, on the social classes to which the parties belong. It is the practice to use a male or female go-between, who must be a person of good family living as one of a couple, a person of some loyalty who has had children, because that is symbolically important. This person, man or woman, is entrusted by the family with the task of identifying, within his or her entourage, a suitable husband or wife.”⁵

“In Morocco, marriage can be a matter for family decision making. The common practice is for a young man's mother to seek out a fiancée for her son, suggest the girl to him and arrange a meeting. If he accepts the choice he tells his parents – who then go to see the girl's parents, bringing small gifts, and ask for her hand in marriage. That is the traditional pattern. The second occasion of contact may be when the girl's par-

ents issue an invitation to the boy's family. Dates will be fixed and a party will then be held for the families. If a special engagement party is held, it will be then that the husband-to-be brings a ring and a dowry gift for the bride.”⁶

This type of practice is actually referred to as “arranged marriage”; it is also known as “traditional marriage” or “marriage of custom”. There is no legal obstacle in such cases to the celebration of the marriage: the only requirement for it to be valid is that each of the future spouses assent to it and, at the moment of contracting the marriage, express intent to lead a genuinely conjugal life.

Research in Belgium using questionnaires completed by school pupils and entitled “Marriage: a choice for life? A study of young people's aspirations and expectations of marriage”⁷ shows that social and cultural origins condition aspirations about marriage. While the young respondents were unanimous in identifying love, commitment and the wish to have children as important factors, the importance accorded to parental opinion differed depending on their backgrounds. In some

families, parental opinion actually took precedence over the wishes of young would-be marriage partners. Different types of marriage are arranged by family decision: traditional marriage, marriage for reasons of custom, expediency or perceived respectability, or forced marriage. The authors of the report conclude that “arranged marriage” need not necessarily mean “forced marriage”. “Obviously an arranged marriage depends on an ‘arrangement’, i.e. negotiation and conciliation between parents and children and between families and in-laws. The various parties need to reach understanding and agreement. In this type of marriage the ‘fiances’ or ‘betrothed’ are involved in the procedure and prepared over a long period for the idea of the wedding. In some cases they are also entitled to a say in the discussions.”⁸

The authors also point out that, in western societies, situations like that described would tend to fall under the heading of “marriages for reasons of expediency”, which they define as “unions to which, as a rule, both future spouses agree”. “Forging an alliance between wealthy families, obtaining an allowance to live on, making a ‘career’ marriage with the boss's son or daughter, attempting to secure an inheritance or wishing to

5. E. Rude-Antoine (ed.) *L'étranger en France [...] au regard du droit - Enquête auprès des populations issues de l'immigration marocaine ou vietnamienne en Ile-de-France* (France), “Droit et Justice” report, December 1998, pp. 88-89.

6. *Ibid.*, p.35-36.

7. A. Garcia (ed.), I. Dumont, E. Melan, V. Monshe, *Le mariage: un choix pour la vie? Une enquête sur les aspirations et attentes des jeunes envers le mariage*, final report, 15 June 2004, p.88 et seq.

8. *Ibid.*, p. 89.



bear a particular name may all be stronger motives stronger than love.”⁹

Situations exist in which the spouses may have agreed to let their own freedom be restricted by obligations imposed through a contract with a third party for the selection of a marriage partner. In order not to oppose their parents who have arranged a meeting, they may state objectively that they desire to be married, but their true inner wish may be the opposite. In such situations, the real individual intention may simply have been to express a willingness to marry subject to family agreement. Two types of expression of intent are present in such marriages, the content of the marriage contract, which is objective evidence of intent, and other statements that are outward signals of supposed intent.

An example is the case of the Turkish girl who came to Germany with her family while still very young and who learns that the family wishes to marry her off without her consent, but says nothing because she is daunted by the obstacles she would face if she voiced dissent.

Another is that of the young woman of Senegalese nationality, aged over 18 and resident in France since the age of five, who agrees after her baccalauréat exams to return to Senegal, aware that marriage is the purpose of the trip but electing not to use the remedies open to her (a declaration to the marriages authority of non-consent to the marriage, or a non-consent statement when the marriage documents are being registered at the consulate).

Information gathered from people who deal with the problem throws up questions about the connections between “arranged” and “forced” marriage.

9. *Ibid.*, p. 89.

In France, paediatrician Marie-Hélène Franjou, a national health service doctor working with the Groupe des Femmes pour l'Abolition des Mutilations Sexuelles [Women's Group for the Abolition of Genital Mutilation], or GAMS, defines forced marriage as “a marriage concluded without regard for the wishes of the individual being married”.¹⁰

Social worker Aydogan Sezai, of the Transact Foundation, explains that in the Netherlands there is no formally agreed definition of “forced marriage”. “If one is free to choose one's spouse,” he comments, “there is no question of an ‘arranged’ or ‘forced’ marriage.” He thus brackets “arranged marriage” and “forced marriage” together. “You can call it an arranged marriage if people undertake to select the marriage partner. In recent years many new immigrants, mostly women, have ended up in shelters for victims of domestic violence. Most of them have confirmed, in talking to us, that they were involved in ‘arranged’ marriages. An arranged marriage is not, by definition, something negative, but a forced marriage is. A forced marriage is one in which the young people involved have no say. All the decisions are taken by the parents and the family; the young people are forced to marry.”¹¹

Sina Bugeja points out that in Malta it “is important to distinguish between ‘forced marriages’ and ‘marriages by agreement’. In the latter case both partners consent to the

marriage; in the former at least one does not consent”.¹²

At the training course held in November 2004 by Equal Opportunities and Anti-Racism Centre in Belgium (*Centre pour l'égalité des chances et la lutte contre le racisme*), the arranged marriage was defined as marriage about which the parents consulted the children. It was pointed out, however, that a girl might give her consent to a marriage but wish at a later stage to retract it on the grounds that she had had no choice. The course participants all agreed that arranged marriage was experienced as forced marriage even when it was concluded with the parties' consent. The classic situation would be that of marriage between cousins or members of families from the same village, or indeed the same lineage.

In other words, in the tradition of arranged marriages, the families of the future spouses are understood to play a central role in arranging the marriage, but the choice of whether or not to marry rests with the spouses. In India, for example, studies show that love and other emotions have very little to do with marriage: culture, tradition, caste and community are still the important factors in the institution of marriage and in families.¹³ A study conducted in India, involving 3 850 literate young people aged 15-29, revealed that 51 % of them would prefer to have their marriage arranged. Clearly attitudes are evolving, however, as 41.8 % said they would prefer to marry for love.

10. M. H. Franjou, “À propos des mariages précoces et forcés en France et [...] ailleurs”, in “Prévention de la pratique des mariages forcés – Première initiative de formation des personnels du service social en faveur des élèves en Seine Saint-Denis”, report compiled for the Délégation régionale aux droits des femmes et à l'égalité, p. 14.

11. Interview conducted for the purposes of this report.

12. See contribution by Sina Bugeja, Executive Director, National Commission for the Promotion of Equality, 12 October 2004.

13. Sex Education, Counselling, Research, Training and Therapy Department of the Family Planning Association of India (SECRIT), “Attitudes and Perceptions of Educated, Urban Youth to Marriage and Sex”, report of a survey conducted by the Family Planning Association of India (FPAI), 1990, 33 pp.

Child marriage and early marriage: where lack of maturity makes consent impossible

Under Article 1 of the United Nations Convention on the Rights of the Child, which was concluded in 1989 and came into force in 1990, “a child means every human being

below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.

However, although many countries have laws that prevent “child

marriages” – also known as “early marriages” – by laying down rules about marital capacity which have regard both to puberty and the procreative function of marriage and to



the need for a certain degree of maturity in order to marry, in some cases there is explicit provision for minors to marry subject to parental authorisation or official dispensation. In some parts of the world, traditional, custom-based and/or religious rules and practices may also play a significant role, so marriages continue to be celebrated according to established rituals and are not necessarily registered.

Such a situation is reflected in a UNICEF report on early marriage which notes that in Surinam, although the Civil Code stipulates 15 as the legal minimum age for marriage, the "Asian Marriage Act", codifying practice in a particular population group, recognises a minimum age for girls of 13.¹⁴

Similarly in India, although a law of 1978 raised the minimum age for marriage from 18 to 21 for men and

from 15 to 18 for women (see Section 4 of the Special Marriage Act), the impact of the reform has been limited because people in rural areas have remained attached to their own traditions.

In situations where marriage can take place between partners aged under 18, or indeed much younger, the question arises as to whether such young people are capable of taking an informed decision about a marriage partner and indeed about the implications of marriage. What is the age from which a child may be considered capable of giving mature, independent and informed consent to sexual relations or marriage? Clearly there is a case for regarding "child marriages" or "early marriages" as a form of forced marriage.

14. UNICEF Innocenti Research Centre, "Early marriage", report, Innocenti Digest, n° 7, March 2001.

Such is the view argued in the outline Council of Europe Parliamentary Assembly report on forced marriages and child marriages, in which rapporteur Rosmarie Zapfl-Helbling makes a link between the two. Her definition of a child marriage is one "where at least one of the partners is younger than 18 years old".¹⁵

It thus matters little whether we refer to "child marriage" or "early marriage". In all such situations the marriage involves at least one partner who has not attained physical, intellectual and emotional maturity, and has therefore been unable to express full consent to marriage.

15. See Rosmarie Zapfl-Helbling, "Forced marriages and child marriages", outline report, Committee on Equal Opportunities for Women and Men, AS/Ega (2004) 45, 7 October 2004.

Bogus marriage, sham marriage, marriage of convenience, putative marriage, marriage to acquire nationality and undesirable marriage: an absence of marital intent

The terms "bogus marriage", "sham marriage" and "marriage of convenience" are used to describe forced marriages in very specific legal contexts. Belgian legal anthropologist Marie-Claire Foblets adds to the list "marriage to acquire nationality" and "putative marriage", although she notes that these are legal designations and that her term of choice is "undesirable marriage".¹⁶

From the information gathered it is clear that some marriages are a strategy to circumvent the rules that various countries apply to foreign nationals. The primary intention involved is not to found a family but rather, in most cases, to use the marriage as a means of obtaining a residence permit or nationality.

Such was the situation in the case of a woman of French nationality who was married in Turkey to a Turkish national. The French public prosecution service applied to the courts for the marriage to be annulled on

the grounds that the husband's only motive in contracting it had been to gain entry to France. On 25 October 2001 the Court of First Instance in Chaumont declared the marriage void, and that decision was upheld by the Court of Appeal (First Civil Chamber) in Dijon on 22 January 2004.¹⁷ The facts that the couple did not have a shared language and that the husband had had the banns published on the day after the woman arrived in Turkey, as well as the 20-year age gap between the spouses, were sufficient proof that matrimony was not the husband's intent.

Similar considerations applied in another case where a husband had organised a wedding taking advantage of his wife's psychological weakness and desire to be married. The woman applied to have the marriage annulled, supplying evidence that the husband's sole motive had been to obtain French residence papers. On 10 January 2003 the Court of First Instance in Bergerac declared the marriage void and the decision was confirmed by the Court of Appeal

(Sixth Chamber) in Bordeaux on 17 March 2004.¹⁸ The judges stated that the husband's behaviour – the fact that he remained in Morocco after the honeymoon while the wife returned to France, and that he then came to France to move in with his sister – indicated an absence of genuine consent to marriage. They added that the wife's withdrawal of her application when the husband did finally move in with her merely indicated that she loved him and was prepared to forgive him. The fact that he had left again some six weeks later demonstrated that the union was false. The judges used the term "pretence", with application solely to the husband.

Again, in the case of a marriage declared void by the Court of First Instance in Bordeaux on 10 September 2002 (a decision upheld by the Sixth Chamber of the Court of Appeal in Bordeaux on 12 May 2004), the judges noted that proof of the absence of consent had been established and that a sham marriage had taken place with the intention of

16. See Belgian Ministry of the French Community, Equal Opportunities Department, General Secretariat Research Office, "Mariage choisi, mariage subi, quels enjeux pour les jeunes", colloquy, Brussels, 21 January 2005.

17. *Juris-Data*, No. 2004-233787.

18. *Juris-Data*, No. 2004-238056.



deceiving the local administration in order to obtain a residence permit. In fact, in this case the husband had been expelled from France following a police investigation which led to his conviction for a criminal offence.

There is no mention in the 1956 United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of these types of marriage, the purpose of which is to circumvent national laws on entry and residence or the acquisition of nationality.

In the Resolution of the Council of the European Union of December 1997, however, they are defined as marriages of convenience, i.e. "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". This complex formulation constitutes a realistic response to the types of union described, in which there is no intent to create a lasting relationship.

The same definition was used in a draft resolution on combating marriages of convenience tabled in the Belgian Chamber of Representatives. The Belgian text also stipulated: "Fictitious marriages are not forced marriages. Conversely, however, forced marriages do, in a certain sense, constitute fictitious marriages, given that there is an absence of consent by one of the parties and that consent is one of the constituent elements in the institution of marriage."¹⁹

The Belgian Equal Opportunities and Anti-Racism Centre states in its

booklet, "The family: its international legal dimensions", that a marriage may be regarded as a *mariage blanc* [the term normally designates "unconsummated marriage"] "if, when the marriage is concluded, at least one of the partners does not have the intention of leading a genuine married life, i.e. living communally in a real and 'sustainable' manner".²⁰

In her outline report on "Forced marriages and child marriages", Rosmarie Zapfl-Helbling uses the term "marriage of convenience" in a sense not confined to the context of immigration law. She characterises it as the situation "where people consciously exploit the marriage institution in order wrongfully to obtain certain advantages", adding: "Most often the aim is to obtain a resident's permit. It may also be that such marriages are a way out of family or cultural pressure."²¹

Similarly, Alexandra Adriaenssens (Belgium) states that in marriages of convenience "at least one of the partners does not have the intention of leading a genuine married life, i.e. of cohabiting in a real and 'sustainable' manner".

Marc Mathekowitsch (Luxembourg) reports in his letter of 18 October 2004: "The problems surrounding marriages of convenience have been studied closely by the Ministry of Justice, which has concluded that all forced marriages are necessarily marriages of convenience and can thus be annulled on the grounds of absence of consent by one of the spouses. Article 146 of the [Luxembourg] Civil Code states that where there is no consent there is no marriage."

It is interesting, too, to note the decision delivered by the Court of First Instance in Besançon on 17 January 2002, and the position taken by the judges in the Civil Chamber of the Besançon Court of Appeal (10 October 2002)²² on the annulment of a marriage between a 50-year-old woman and a Ukrainian national aged 21. The judges found that the institution of marriage had been exploited and that the husband's intention had been to obtain the right to reside legally in France; they also noted the age difference between the spouses, the absence of cohabitation and the fact that the marriage was unconsummated. They used the term "*mariage blanc*".

At the Court of First Instance in Melun on 9 January 1996, and then at the Court of Appeal in Paris on 3 June 1997,²³ judges refused – on the ground of absence of proof – to annul a marriage between a French-Algerian woman and her Algerian husband. The woman had accused her family and her husband's family of having forced her to marry in Algeria solely for the purpose of obtaining a residence permit for her husband.

The decision in this case offers a good illustration of the problem of distinguishing a forced marriage from a marriage characterised by absence of marital intent. The judges did not recognise this marriage as constituting a form of psychological violence against the woman and did not conclude that there had been no consent. It was hard to supply evidence because the marriage had been celebrated in a foreign country to which she had travelled willingly.²⁴

22. *Juris-Data*, No. 2002-194160.

23. *Juris-Data*, No. 1997-022594.

24. For a decision with the opposite effect, see Court of Cassation, 1st Civil Chamber, 2 December 1997, *Juris-Data*, No.005067: in this case a police officer's testimony corroborated evidence against a husband accused of violence.

19. Belgian Chamber of Representatives, "Proposition de résolution relative à la lutte contre les mariages de complaisance" (Draft resolution on combating marriages of convenience), 13 July 2004, Doc 51 1283/001.

20. Centre pour l'égalité des chances et la Lutte contre le racisme, *La famille dans ses dimensions juridiques internationales*, booklet (as of 1 January 2003), p. 34

21. Rosmarie Zapfl-Helbling, "Forced marriages and child marriages", op. cit.

This is similar to the position taken in the 1956 United Nations Sup-

25. Rosmarie Zapfl-Helbling, "Forced marriages and child marriages", op. cit.

plementary Convention on the Abolition of Slavery, which lists under practices similar to slavery "any institution or practice whereby [...] a woman, without the right to refuse, is

Marriage under constraint: violation of the will and restriction of freedom

Forced marriage and marriage under constraint are similar concepts: "A marriage is forced where at least one of the parties does not consent to it and constraint is used."²⁵



promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group".

The Belgian Equal Opportunities and Anti-Racism Centre makes a similar point in its booklet,²⁶ stating that constraint exists where one of the two partners (or both), whether minor or adult, has not consented but has been constrained to marry.

Such situations of constraint may be compounded by physical coercion, ranging from unlawful imprisonment to physical, including sexual, assault.

Examples include the case of a girl who expressed opposition to a forced marriage and was subsequently sent by her family to another country where she was held captive and assaulted.

In another case, a 13-year-old was married to man of 40 and forced, in her parents' home and with their agreement, to engage in sexual acts with him. This was a case of both forced marriage and rape.

The reality of such situations is confirmed by the information collected from various social, legal and political agencies.

At the training course held in November 2004 by the Belgian Equal Opportunities and Anti-Racism Centre, forced marriage was defined as "the union of young women with men whom they do not, or hardly, know and with whom they do not want to live". All the participants at the training course agreed that a marriage could be said to be "forced" if families used forms of pressure – such as emotional blackmail, physical constraint, violence or kidnapping – in order to obtain a girl's consent.

The report "Marriage: a choice for life? A study of young people's aspirations and expectations of marriage"²⁷ states that one can use the term "forced marriage" where parents or guardians impose on their children or wards a union negotiated without any

consultation with them, as well as where families resort to coercive practices, such as emotional blackmail, physical constraint, violence, kidnapping, locking a child up and confiscating identity papers, if consent is not forthcoming.

The French association Voix d'Elles-Rebelles [She-Rebels Speak Out] defines forced marriage as "the fact of being married against your will to someone you know or do not know. It is also a form of physical and psychological violence that leads to many problems including psychological suffering and material and legal problems."²⁸

In Estonia, forced marriage is not defined under the legislation. Annika Hüvanen suggests to define forced marriage as "a marriage conducted without the full consent of both parties or in which duress is a factor", and to include bridal kidnappings and violent treatment by third parties. She notes that the meaning of forced marriage may differ in different cultural contexts and that a distinction should be drawn between "forced marriages and arranged marriages".²⁹

In certain circumstances, marriages brought about by violence amount to rape. Christine Jama, a lawyer with the French association Voix de Femmes [Women's Voice], states: "To ignore the need for a woman's consent is also to infringe her individual freedom by denying her free choice with regard to whom she marries, when she marries and her own sexuality. Women in forced marriages undergo physical, sexual and psychological violence, as well as deprivation of liberty. It amounts to rape."³⁰

Such a scenario echoes one of the types of marriage described in an opinion submitted to the French Prime Minister by the Haut Conseil à l'Intégration, and the definition of forced marriage contained therein. The document describes: "a marriage under customary law, decided on by the family, at puberty or even as early as age 10-12. The husband, who is normally older, is a man chosen by the family, of the same religion, family or ethnicity. The young girl or teenager in such cases is subjected to intercourse by force, as a rule at the weekend in her parents' home." In the words of Professor Henrion "it is neither more nor less than organised, premeditated rape".³¹

"Forced marriage" is thus not a term with legal content³² and it is defined differently in different countries. This is probably because, in cases other than those where there is actual physical proof that a person's freedom of consent has been denied by physical force or violence – eliminating any doubt that the marriage was forced – it is not always easy to determine the relationship between the individual's inner intent and the psychological phenomena associated with the explicit content of the marriage contract. The fact is that the intent expressed when a marriage is concluded is more than simply the terms used to express it: it also depends on all the circumstances in which it is expressed. Anxiety and fear can rule out all thought of resistance, and then there cannot be any genuine consent. Similarly it is not always possible to supply proof of emotional threats that can make individuals vulnerable and prevent them from opposing a marriage. Study of actual cases reveals a too-systematic tendency not to recognise that marriages may be forced when they have taken place with a view to circumventing immigration rules, i.e. without any genuine marital intent.

26. See Centre pour l'égalité des chances et la lutte contre le racisme, *La famille dans ses dimensions juridiques internationales*, op. cit., p. 33.

27. A. Garcia (ed.), I. Dumont, E. Melan, V. Monshe, *Le mariage: un choix pour la vie? Une enquête sur les aspirations et attentes des jeunes envers le mariage*, op. cit., p. 88 et seq.

28. Quoted by Caroline Durand, "Prévention des mariages forcés: que retiennent les lycéen(ne)s des actions de prévention sur la pratique des mariages forcés conduites au sein d'établissements scolaires?", postgraduate dissertation, University of Paris X, Nanterre, Psychological and Educational Studies Training and Research Unit, Department of Educational Studies, October 2004, p. 10.

29. See contribution submitted by Annika Hüvanen, Department of Gender Equality, Ministry of Social Affairs, dated 1 November 2004.

30. C. Jama, "L'accompagnement sociocritique des femmes confrontées aux mariages forcés", in *Hommes et Migrations - Femmes contre la violence*, March-April 2004, No.1248, p. 23.

31. "Les droits des femmes issues de l'immigration", opinion submitted to the Prime Minister by the Haut Conseil à l'intégration, <http://www.cfdt.fr>, p. 18.

32. The only uses of the term "forced marriage" in French case law in the last 10 years occur in a judgment by the Regional Court in Evreux on 7 May 2002 and a subsequent judgment by the Appeal Court in Rouen (First Chamber) on 20 July 2004 in a case where a victim was seeking compensation (*Juris-Data*, No.2004-248626).

Quantitative data: estimates only

Forced marriage not only assumes many forms, but it is also practised in many regions of the world. Among the poorest peoples on the planet it is actually increasing. The International Centre for Research on Women (ICRW) ¹ estimated in 2003 that more than 51 million girls aged under 18 were married and that the figure would rise to over 100 million in the next 10 years.

It is hard, however, to determine the incidence of forced marriage partly because many marriages are unregistered and unofficial, and therefore escape any system of data collection. Analysis of the information gathered from the member states' representatives on the CDEG confirms this problem. No country has carried out a quantitative survey to determine the sociological realities of forced marriages. At best we can draw on a few small-scale studies and anecdotal information.

According to the UNICEF report cited earlier,² child marriage takes place all over the world. In parts of Africa and Southern Asia it is a common practice. In the Middle East, North Africa and other parts of Asia, too, among groups of people with a traditional way of life, marriages are frequently contracted from puberty onwards. In some parts of West and East Africa and Southern Asia, marriage well before puberty is not uncommon, and in certain parts of Latin America and Eastern Europe girls frequently marry between the

ages of 16 and 18. There are very few national statistics on marriages involving children under the age of 14 and even fewer on those involving under-10-year-olds, except in Bangladesh where a series of Demographic and Health Studies carried out in 1996 and 1997 revealed that 5% of girls aged 10-14 years were married.

The same report indicates, using a sample group of 5 000 women, that in the Indian state of Rajasthan in 1993, 56% of women were married under the age of 15, and 17% before their 10th birthday. A study carried out in 1998 in Madhya Pradesh found that almost 14% of girls had been married between the ages of 10 and 14. In Ethiopia and parts of West Africa, marriages involving children aged 7-8 are not uncommon. Dozens of 13 to 16-year-old girls in these countries commit suicide to escape forced marriages. In Ethiopia, "key figures" on the "fraternel.com" website put the proportion of early marriages there at 54.5%. Two ICRW reports ³ indicate that 50% of Ethiopian girls marry before they reach the age of 15. In the state of Kebbi in northern Nigeria, the average age of marriage is just over 11, while the national average for Nigeria is 17. In Nepal,⁴ 7% of girls are married by the age of 10, and 40% by the age of 15.

According to figures from the United Nations Population Division,⁵

among 15 to 19-year-olds in sub-Saharan Africa 74% of girls and 5% of boys in the Democratic Republic of Congo married under the age of 18; in Niger the figures are 70% of girls and 4% of boys; in Congo 56% and 12% respectively; in Uganda 50% and 11%; and in Mali 50% and 5%. In Asia the corresponding figures are: for Afghanistan, 54% and 9%; for Bangladesh, 51% and 5%; and for Nepal, 42% and 14%. Parallel figures for the Middle East are: in Iraq 28% of girls and 15% of boys; in Syria 25% and 4%; and in Yemen 24% and 5%. In Latin America and the Caribbean it is calculated that 30% of girls and 7% of boys aged 15-19 are married in Honduras; the figures for Cuba are 29% of girls and 7% of boys.

Population Council figures suggest that 77% of girls in Niger, 68% in Nepal, 70% in Mali, 62% in Burkina Faso and 64% in Yemen married before the age of 18.

Early marriages are thus more widespread in Central and West Africa (where the respective rates are 40% and 49%) than in East Africa (27%) or North and South Africa (20%). In Asia early marriage is most common in Afghanistan, Nepal and Bangladesh.

In the industrialised countries of Europe, few women marry before the age of 25. In Germany, according to the Federal Statistical Office, 21% of all women entering into marriage are 25 year-old or younger, but among 25 year-old women or younger, only 0,8% enter into marriage and the proportion of marriage is 1,2% for the population aged 19-25. In Italy, two

1. See ICRW (International Centre for Research on Women) website: www.ircw.org

2. UNICEF, "Early marriage", op. cit.

3. ICRW, "Too Young to Wed" and "Child Marriage": see www.ircw.org

4. UNICEF, "Early marriage", op. cit.

5. United Nations Population Division, Department of Economic and Social Affairs, World Marriage Patterns, 2000.



national trends in matrimonial practice have emerged since the 1970s.⁶ On the one hand, young women (aged 18-34) are tending to remain longer in the family home (and the same tendency is even more marked among young men). Between 1994 and 2002, the proportion of women aged 25-29 living with their parents rose from 36.8% to 50.4% (the corresponding figure for young men went from 60.5% to 72.3%). The increase was particularly marked among women aged 30-34, the proportion rising in a decade from 12.2% to 36.3% (with corresponding figures for men of 24.9% increasing to 36.3%). On the other hand, the average age of marriage has risen for women (closing the gap between it and the corresponding age for men) and there has been an increase in the number of young couples living together before marriage. Between 1994 and 2002, average age at marriage increased by a year for both sexes (from 26.5 years to 27.6 years and from 29.3 years to 30.5 years respectively). Civil marriages are also becoming more common: in 1966 they accounted for 1.2% of all marriages whereas in 1986 the figure was 14.2% and by 2001 it had risen to 26.8%.⁷ There is a similar trend in all the industrialised countries.

Nonetheless, early marriage continues to be practised in some parts of Central and Eastern Europe, particularly among Roma and in "the former Yugoslav Republic of Macedonia", where 27% of the women who married in 1994 were aged 15-19. Worldwide, research shows that early marriage and early motherhood have been more or less abandoned by the wealthiest sections of society, even in poor countries where traditions are still strong. Virtually everywhere, poor women in rural areas tend to marry younger than those in urban areas, and levels of education also play a decisive role.⁸

Countries in Europe tend to associate the practice of early marriage with migratory flows and the difficulties that immigrant families experience in becoming integrated.

According to GAMS (Women's Group for the Abolition of Genital Mutilation), in 2002, in the 14 French *départements* [counties] most affected (eight in Ile-de-France plus those of Bouches-du-Rhône, Eure, Nord, Oise, Rhône and Seine-Maritime), 70 000 10 to 18-year-olds of immigrant origin experienced problems with a forced or arranged marriage. Specifically, in the eight *départements* of Ile-de-France, the GAMS estimates that some 40 000 young people of immigrant origin have experienced, or been threatened with, forced early marriage.

It is a type of marriage particularly common among communities that originated in Mali, Mauritania and Senegal, but also among groups originally from North Africa, Asia and Turkey.⁹ That is confirmed in the opinion submitted to the French Prime Minister by the Integration Council, which included the following observation: "While communities that originated in sub-Saharan Africa practise early marriage of very young girls, often under customary law, the practice in communities from the Maghreb, Turkey and Asia tends to be that of officially celebrated, arranged marriages of young adults."¹⁰

Forced marriage in France affects not only women, most of them from the Maghreb, sub-Saharan Africa, Turkey, Pakistan and India, but also young men. It is important to recognise the predicament of men who, as sons-in-law, join spouses in immigrant communities who may be foreign nationals or French nationals of foreign origin. In 1999, in the Turkish community in France, the proportion of men entering the country for reasons of family reunification was 31%, while the proportion entering as spouses of French nationals was 64%. Although men in these circumstances are rarely victims of physical

violence they may nonetheless suffer a form of oppression. The following article describes one such case.

"Mr. K. arrived in France in February 2000, having been married in Turkey to a young woman of French nationality, who had not taken the necessary steps to have her marriage registered in France. There had been more than 400 guests at the wedding. Mr. K's in-laws prevented him from signing up for French language classes and his father-in-law made him work, without pay, in his business. When notice to renew his temporary residence permit came from the *préfecture* [county administrative office], it was not passed on to him. When he went there, seven months late, in December 2001, he was issued with a receipt acknowledging his application. He then learned that his wife had claimed the marriage was void and had filed for a divorce in October 2001. He was subsequently thrown out by his wife and her family, and in July 2002 received a registered letter from the *préfecture* instructing him to leave the country on the grounds that 'it could not be concluded from the information received in the case that refusal of permission to reside in France would disproportionately infringe his personal and family life. The letter stated that he no longer lived with Mrs. K., he had not been long resident on French soil and he had continuing ties with Turkey, where the rest of his family still lived.' Mr. K. had held a public-service post in Turkey, from which he had had to resign in order to come to France. When he returns to Turkey he will be unemployed. He has learned French, having attended classes since his separation, and has integrated well in his workplace, but it is true that he left all his family behind in Turkey. Was his marriage void? Surely not, with 400 guests at the wedding! Yet he is being forced to return home a failure – 'defrauded' by a family known to have used the same practice with their first daughter, and now preparing to repeat it with their third. The daughters have consented to the process in the name of 'loyalty to the family'.¹¹

Marie Lazaridis, a project leader with the French Ministry for Youth, Education and Research, reported the

6. Linda Laura Sabbadini, *Come cambia la vita delle donne*, Istituto nazionale di statistica, Ministero per le Pari Opportunità, Rome, 2004.

7. Source: bill on civil marriage, "Per la laicità dello Stato", Italian Radical Party.

8. See table correlating age at marriage with level of education in Sexual Relationships and Marriage Worldwide, Alan Guttmacher Institute, 1995.

9. See Isabelle Gillette-Faye, *Groupe des femmes pour l'abolition des mutilations sexuelles*, Paris, 24 January 2002.

10. Haut Conseil à l'Intégration "Les droits des femmes issues de l'immigration", op. cit., p. 18



case of a young Pakistani who asked to be placed in residential care to escape a marriage that his family had lined up for him: "Legally, nothing could be done because he was an adult. The example well illustrates that, while this is an issue which tends to affect girls, we cannot overlook its effects on boys too. Although the examples are fewer, they may help boys to recognise [forced marriage] as a shared risk."¹¹

The number of school-age girls involved in forced marriages is unknown. There is, however, a growing concern to take steps at the earliest possible age to prevent such marriages, and particular attention in this regard is now paid to primary school pupils. In the French *département* of Val d'Oise, it is estimated that there are around 15 such cases in schools every year. The corresponding figure in Seine-Saint-Denis is thought to be closer to 30.¹²

In Belgium there is still very little information about the phenomenon of forced marriages generally. Discussion of the issue tends to be provoked by news items concerning families of immigrant origin, and it commonly arises just before school breaks up for the summer or at the start of a new autumn term.

However, an exploratory study among pupils aged 15-18,¹³ commissioned by the Chief Minister of the French Community and the Equal Opportunities Department of the Ministry for the French Community has assessed awareness within that age group of forced marriage, of the types of situation in which such marriages take place and of their consequences. Seventy-four per cent of pupils believed that forced marriages continued to be practised in Belgium. A minority (16%) added that they

knew of cases of marriage under coercion within their circle of acquaintance, while a smaller number (7%) said they were aware of it within their family. Girls were more acutely aware of the problem than boys were (21% awareness as opposed to 14%). Older respondents were more knowledgeable about forced marriages and stated that they took place frequently in Belgium. More of the older respondents (39.5% of 19 to 20-year-olds, as compared with 22% of 17- to 18-year-olds and 16% of 15- to 16-year-olds) seemed to know of actual cases. The replies did not differ between different types of school, but the assertion that forced marriages were frequent in Belgium was made more often by students in technical (25%) or vocational (23%) streams than by those in general streams (14%). Thirty-two percent of students on vocational courses knew of cases of forced marriage, as compared with 29% of those studying technical subjects and 19% of those taking general subjects. No significant difference was noted between students with different religious or philosophical convictions but knowledge of actual cases of forced marriage appeared more common among young people attending an Islamic religious education class and particularly among those who said they wanted their own marriage to be celebrated by an imam. Students whose parents had had primary education only were likelier than others to say that they knew of cases of forced marriage among people of their acquaintance. Young people whose parents had not attended secondary school were more likely than others to know of cases within their families.

The same study indicated that the most common motivating factors in forced marriage were desire to obtain a residence permit (in 20.6% of cases), parental constraint (20.1%), and the need to make an expected child legitimate (20%). Parental constraint was mentioned more frequently by girls than by boys (53.6% as against 48.4%). More boys mentioned money as a factor (33.7%, as against 17.5% of girls).

Statistics from Estonia show that forced marriage is not a problem there, and there have been no proven

cases. In fact, marriage itself is not a characteristic feature of Estonian culture, cohabitation between men and women being the most widespread type of shared living arrangement. In 1970 there were 9.1 marriages per 1 000 head of population; in 1990 the figure was 7.5 and in 2002 it had fallen to 4.31. The number of couples contracting marriage in the country fell from 11 774 in 1990 to just 5 853 in 2002. The average age of men contracting a first marriage rose from 25.7 years in 1995 to 28.2 years in 2002, while the corresponding increase among women was from 23.5 years to 25.5 years.¹⁵

According to the Estonian Statistical Office, among a resident population of more than 1 370 052, only 2 221 were born in, or were citizens of, certain African and Asian countries.¹⁶ Annika Hūvanen therefore explains that the proportion of immigrants in Estonian society who come from countries more likely to have a tradition of forced marriage is relatively small (0.0016%). She adds that many of the people who come from Asian or African countries are students studying at university in Estonia. Other immigrants resident in Estonia belong to communities that originated in countries of the former Soviet Union including Russia, Belarus, Ukraine and Armenia (together they account for around 28% of the population). Immigration into Estonia was encouraged under the Soviet occupation, which began during the Second World War.

In the United Kingdom, where forced marriage is defined as "a marriage without the full consent of both parties and where duress is a factor",¹⁷ the most recent reports suggest there are around 1 000 such cases,¹⁸ while older reports put the figure at several hundred.¹⁹ The Home Office estimates that 15% of the victims are male.²⁰

15. Estonian Statistical Office, [HYPERLINK http://www.stat.ee](http://www.stat.ee)

16. *Ibid.* based on population figures as of 31 March 2000.

17. www.homeoffice.gov.uk/docs2/ujapfm.pdf

18. *Ibid.*, quoting Humayun Ansari, "Muslims in Britain", Minority Rights Group International, London, August 2002. See also Lydia Magnoni, "Mariage forcé: tradition ou violence", in *l'Essentiel*, May 2002.

11. See *Hommes et Migrations - Femmes contre la violence*, op. cit., p. 36; see also Gaye Petek-Salom, "Des gendres et des brues choisis au pays par les familles turques de France", in *Hommes et Migrations - Vies de familles*, No.1232, July-August 2001.

12. See Marie Lazaridis, "Les filles à l'école: de l'égalité des chances à la prévention des mariages forcés", in *Hommes et Migrations - Femmes contre la violence*, *ibid.*, p. 46.

13. *Ibid.*, pp 45 and 46.

14. A. Garcia (ed.), I. Dumont, E. Melan, V. Monshe, *Le mariage: un choix pour la vie? Une enquête sur les aspirations et attentes des jeunes envers le mariage*, op. cit.



In Portugal, Alexandra Carvalho reports that forced marriage takes place in the Hindu and Ishmaelite communities. There have been many reports in the media of arranged marriages, for payment, involving Portuguese women and foreign men of Arab origin – most of the marriages being celebrated in England (from where the men can then enter Portugal and obtain legal residence rights). A number of cases in which foreign nationals were regularised in 2001 and 2003 resulted from such marriages (more especially with Portuguese women from very poor districts). With the increase in immigration from Eastern Europe since 2001, there has been an increase in Portugal in the numbers of victims of human trafficking, exploitation and prostitution. Organisations that assist immigrants have recorded a few cases of forced marriage.²¹

In the Netherlands, Aydogan Sezai of the “*Transact*” Foundation reports on the situation of Turkish women who arrive in the country aged between 16 and 21, having undergone a forced marriage. Eighty per cent of them, as girls aged 16-17 could not have consented to marriage. Only 20% were consenting. “Most of these girls fall in love with a boy from Europe. [They] suffer psychological violence and physical constraints including false imprisonment. If the girl refuses to submit to the marriage she is beaten by her parents, most commonly her mother. It is often the mother who first resorts to violence, and her example is then followed by the father and brothers. In the Netherlands, forced marriages are an issue among the largest groups of migrants such as the Turks and Moroccans, but they also affect young Pakistani and African girls. In some cases boys too undergo forced marriage with a girl from the country of origin.” Figures for the number of forced marriages in the Turkish community are similar to

those produced by the Elele association in France, which estimates that 94% of boys and 98% of girls of Turkish origin have their marriages arranged by their parents.²²

Norway has also become a host country for immigration to Europe and 8% of the population is of immigrant origin. The largest immigrant groups are, in order, Pakistani, Swedish, Danish, Iraqi, Vietnamese, Somalis, followed by citizens of former Yugoslavia (mostly Muslim Kosovars), Iranians and Turkish. The number of immigrants in Norway has doubled in a decade. In Oslo, where almost 22% of the immigrants are concentrated (18% of them being of non-European origin), more than one child in four is a foreign national. The Oslo-based association, Human Rights Service, reports that between 1996 and 2001, 82% of Moroccan girls of Norwegian nationality were married to Moroccan citizens. Among Pakistani girls of Norwegian nationality, 76% marry Pakistani citizens. Hege Storhaug described young Muslim girls as “human visas in a new form of trade”, noting that the practice of marriage to acquire residence rights was encouraged by the laws on family reunification.²³ This description reflects the view of the association Human Rights Service and not this of the Norwegian Government.

In Germany no reliable statistics on the extent of the problem are available. The Federal Government has not yet compiled any information on the incidence and nature of forced marriages in the country. Preliminary conclusions from a recently published study entitled “Health, Well-Being and Personal Safety of Women in Germany” – the sample group for which included a proportion of the population of women of Turkish origin – suggest, however, that forced marriage is practised.²⁴

The reality is that these quantitative data, restricted as they are to a few countries and generally fragmentary, do not provide a proper overview of the phenomenon. Nonetheless the fact that, while people are tending to marry later in industrialised societies (between the ages of 25 and 30), marriage under the age of 18, or at very early ages, continues to be practised in many parts of the world suggests that a high proportion of such marriages are forced marriages. It would be extremely useful to identify the socio-demographic and cultural characteristics of individuals who fear, or who contract, forced marriages in each of the countries studied. For example, by cross-referencing various social indicators such as the age and level of education of the young people involved, their countries of birth and their father's and mother's socio-economic backgrounds, the number and sex of their siblings, the family religion and the frequency of visits to their country of origin, we could achieve a clearer and more realistic picture of the phenomenon of forced marriage. We could thus assess various factors including the numbers of such marriages and their different dimensions (child marriages, arranged marriages, marriages of convenience, etc.), identify the regions where they take place and develop more pertinent responses to the problem. We could analyse its incidence more closely, taking into account not only economic circumstances (including unemployment and impoverishment), but also political crises and armed conflicts that could have an aggravating effect inasmuch as they generate insecurity and vulnerability.

In conclusion, the phenomenon of forced marriage cannot be seen from the same angle in all regions of the world, and we need a wide range of approaches according to the different contexts in which we study it. More specifically, in countries where it is a practice associated with migration, we need to consider not only the relevant systems of civil and criminal law and necessary legal reforms, but also the way in which matters of private international law are addressed (action under international human-rights agreements, the problems of

19. www.homeoffice.gov.uk/docs/pcfoma.pdf. M. O'Brien, B. Roche, K. Vaz and P. Scotland, “Forced marriage – the overseas dimension”, 4 August 2000. See also extract from “Dealing with cases of forced marriage”.

20. *Ibid.*

21. From an interview with Alexandra Carvalho, of the Portuguese Council for Refugees

22. R. D'Hoop, “Les mariages forcés”, report for Amnesty International:

see http://www.amnestyinternational.be/doc/article.php3?id_article=4338

23. See www.racismeantiblanco.bizland.com/silenceselectif/bid42.htm: “L'inquiétude des Norvégiens”, 21 September 2003.

24. The German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) has posted an English-language summary of this study on its website.



classifying the phenomenon and conflicts about choice of law and whether enforcing public policy takes prece-

dence over compliance with foreign law). Description of a few actual cases will improve our insight into

the problem of forced marriages and reinforce the urgency of tackling it.

Actual cases: how media interest can generate awareness

Marriage is a major life event based on a choice. But it can also assume a different form – as the ultimate denial of the individual's right

to choose a future partner. When it is forced upon young people, it plunges them into misery and drives them to seek help. This should be clear from

the following summaries of a few cases that attracted media coverage and raised public awareness of the issue.

Fatoumata Konta

Return to the home country and a young girl's struggle

Schoolgirl Fatoumata Konta had been in love with a young French national for six months. In February 2000 she told her parents about him – her father first. He reacted with shock and stopped speaking to his daughter, probably in part because the young man in question was white, but also because he could not accept that his level-headed daughter had actually become involved with a boy. That same month, Fatoumata left home to move in with her boyfriend.

Her mother, who had been on holiday, returned and paid a visit to the senior student counsellor responsible for Fatoumata, to report that everything had been resolved. Fatoumata moved back home only to find that nothing had changed and that her father still refused to talk to her.

She then came up with a plan to go and consult her grandparents and elder brother in Casamance in Senegal. She told her mother, and her mother spoke to her father about it. He paid for her air ticket. The girl arrived in Senegal on 13 April 2000 to stay at the home of her father's second wife for a fortnight. Her plan was to spend two or three days in

Dakar before going on to her grandparents' home in Casamance. But her father then arrived to stay for a week. Two weeks passed and they were still in Dakar. Fatoumata suggested that she should spend a few days with her grandparents because it was drawing near the date for her return to France, where she had to sit her *baccalauréat* exams. Her father asked Fatoumata for her passport in order to go to the airport. Father and daughter then set off for Casamance with no further mention of the return trip. At her grandparents' home the girl became anxious. It was then that she learned of her father's intention that she should never return to France.

Meanwhile, after the Easter holidays, when there was no sign of Fatoumata, students and teachers at her school decided to take action: they got up a petition and collected signatures from both staff and pupils. Fatoumata's father was then called to see an advisor to the President of Senegal, Abdoulaye Wade. By this time Fatoumata had been in Senegal for two months. She had sent a letter to her boyfriend explaining the situation and, in his reply, he had sent her an address in Dakar and some

money. His letter took a month to arrive. The girl managed to recover her passport among her father's things, and she then boarded a bus. The women in the village were on her side, disapproving of the father's attitude, and her departure was not mentioned. Her one thought was to get away, and she was prepared to kill herself if she failed. On arrival at a hotel in Kolda at 10 pm, she tried to register under an assumed name. "You don't need to do that," the hotel manager told her. "Everyone here knows you. You are FK. We won't say anything." At dawn the following morning she took a taxi-bus to Dakar, and that same evening boarded another bus bound for France. Later she learned that instructions had come from the President's office that she was to be let through at the airport. Fatoumata sat her *baccalauréat*. The following year she entered the Lycée Lamartine to take a preparatory course for a high-flying degree, and a year later she went to the University of Paris IV to study French. She has since set up the Association Fatoumata pour l'Emancipation des Femmes [Fatoumata Association for Women's Emancipation] (AFEF).



Luisa Toumi

Arranged marriage with an unknown partner

In 1994, when she was aged 17, Louisa Toumi found herself married to Abdelaziz Amri (31): the marriage had taken place by proxy at a ceremony in Bouhouria, in a small village near Oujda (Morocco), and had been arranged by the parents of the couple-to-be. Louisa had been living in the country for a year, having been sent back there from France by her father. After the arranged marriage

she returned to France and was placed in a home. A few weeks later she left it to meet her husband for the first time: he was staying with an uncle in Nanterre. Traditionally a “marriage consummation ceremony” marks the start of a couple’s life together. In November 1994, three months after the marriage the two families were invited to the celebration in the girl’s family home. Louisa

accuses her father of having threatened her there, putting a knife to her throat, and her husband of having raped her after dragging her by the hair. In May 1995, after several months of married life, she turned to the county social services department and took refuge with them. The case came before the Assize Court in Melun, where the father was prosecuted for aiding and abetting rape.

Aïssitou

National of both France and Mali: a trip to meet the family turns into an unwanted marriage

“We’ll go back home this summer”, her father had announced. By home, he meant the village in Mali from which he had emigrated many years previously, long before his daughter’s birth. Aïssitou had grown up in France with dual nationality and was attending high school there. She had been brought up to respect African traditions and working-class neighbourhood values. She would have preferred to spend the summer at a youth camp but she knew not to challenge any decision of her father’s. Besides, the trip would be an opportunity for discovering her roots and getting to know the rest of her family. At 17 years old, she was embarking on a journey to hell. Several months later, journalists at the television channel France 2 managed to trace her. Working on a report about forced mar-

riages, they had learned of her story from an educational social worker to whom she had sent a despairing letter: ‘I am more dead than alive,’ she had written. ‘You are my only hope.’ The social worker had alerted the local youth court but Aïssitou’s dual nationality meant that she was subject to the national law of Mali. The TV journalists travelled there and managed to contact her. [...] By means of deception she succeeded in meeting them and telling them of the nightmare she had experienced. On arrival she had been greeted by beating drums – to celebrate her marriage, she was told. The whole thing had been planned and organised, with the husband chosen well in advance. The only problems were that Aïssitou did not know him, did not want to get married and did not

want to stay in Mali. Despite her opposition, her tears and her despair, the marriage went ahead. Shortly after it, her parents returned to France. She was thus abandoned to a polygamist in his forties who had no qualms about beating her when he wanted sex. She was kept locked up and isolated. After a year and a half, and thanks to the journalists’ complicity and initiative, Aïssitou managed to escape. On her arrival at France’s Roissy airport, there was no one to meet her. In her family’s eyes she had become a pariah – a creature of shame. She no longer had any friends or any sense of direction ... How was she to rebuild her life?’¹

1. Lien social review, 27 June 2002, No.627.

Fadime Sahindral

Killed by her Turkish father for dishonouring her family

In 1998, Turkish immigrant Rahmi Sahindral was found guilty by a Swedish court following a prosecution initiated by his daughter Fadime and her boyfriend Patrik Lindesjos. Sahindral had, on more than one occasion, threatened the couple with death if they did not separate. Despite their victory in court, however, the pair were to suffer a tragic fate. A month after the verdict, just as they were about to begin life together, Lindesjos

died in a car accident. Three years later, Rahmi Sahindral shot his daughter dead – in an incident which raised questions about the circumstances of the accident that had killed her fiancé. Unrepentant, Sahindral declared that he regarded the murder as justifiable: his daughter had dishonoured her family by her relationship with the Swede. Sahindral had been living in Sweden since 1981, yet

after 21 years there he had not yet mastered the language.

What we describe here are just a few illustrations of situations relevant to forced marriage. Many other examples have been documented,² notably concerning the Indian state of Rajasthan and the day known as Akha Teej when marriages between boys and girls are celebrated en masse; Bangla-

2. UNICEF, “Early marriage”, op. cit.



desh, where many girls are married shortly after puberty, partly to ease the financial burden on their parents and partly to protect their sexual integrity; and Albania, where families encourage girls to marry young in order to grab likely husbands before

they leave their villages to seek work in urban areas, and also to prevent the girls being kidnapped on their way to school.

It would be extremely valuable to document such cases in all the countries studied and to pool experience.

We could thus establish whether all forced marriages have certain common characteristics, underlying causes and consequences, and could make governments aware of the importance of research into what is not, sadly, a rare phenomenon.

The many related factors behind forced marriage

There are many reasons why forced marriages take place. The underlying factors differ depending on whether we look at countries where such marriages are perpetuated by rural, often poor families, or at European Union countries where they are practised among families of immigrant origin.

From all the information collected, it would seem that marriage is regarded as a strategy for constructing families, a focus of financial transactions and a means of protecting girls. Forced marriage may be explained by one or more of the following factors:

- the pressure of patriarchal culture and obedience to one's father;
- the importance of maintaining family honour and the wish to preserve a girl's virginity;
- the need to ensure that older people are cared for (families believing they will be better protected and looked after by a spouse selected from within the family circle);
- a preference for cross-cousin marriages with a view to the transmission of assets;
- a strategy for reinforcing the mother-in-law's authority, providing her with a docile daughter-in-law.

Forced marriages may also be encouraged by factors specifically

connected with migration, for example:

- parents' desire to ensure that their children do not lose their tradition and cultural codes or become overly "Europeanised";
- parents' wish to reassert their own original identity through their daughters' upbringing;
- a concern to perpetuate the migratory process through the arrival of new immigrants as spouses;
- the importance attached to the repayment of debt, in the sense of returning financial assistance: families who have emigrated to Europe may have received help from relatives at home who look after their business interests there or keep the assets accumulated by the migrants within the family;
- deteriorating relations between the sexes, compounded by financial and social insecurity and the difficulties experienced by sons in attempting to integrate;
- the rise of religious fundamentalism in different forms, squeezing out secularism and generating a distorted image of the woman's role;
- the impact of urban social policies which cater mainly for young men (i.e. older brothers) and create neighbourhoods lacking in any social mix;
- a crisis in relation to marriage and sexuality in some communities

and the difficulties of making conquests among the opposite sex;

- a concern in some families to restrict mixed marriages.

Whatever the factors at work, anthropologist Nicole-Claude Mathieu describes the continuing practice of forced marriage in these terms: "an invasion [...] by the constant and constraining physical and mental presence of men to whom they must submit".¹ Mathieu argues that consent depends in all cases upon prior awareness of the balance of power. Women consent to be dominated not for utilitarian reasons, or because they accept prevailing standards, but because the very fact of their subjection can prevent them from appreciating the extent of the domination exercised upon them.²

Collecting information about the factors that underlie forced marriages is thus essential if any effective awareness-raising policies are to be put in place or preventive initiatives taken. Once governments recognise the types of factor mentioned – which are used to justify forced marriages – they will be better equipped to argue that they constitute a violation of human rights.

1. N.C. Mathieu, *L'anatomie politique, catégorisation et idéologie de sexe*, Côté femmes, Paris, 1991.

2. *Ibid.*, p. 232.

The collective and individual consequences of forced marriage

For both boys and girls, forced marriage has psychological, emotional, medical, financial and legal consequences.

Psychological and emotional problems

As the real situations described above make clear, forced marriage, with all its inherent risks of psychological, sexual and/or domestic violence, places the girls or boys concerned in a vulnerable position. A person forcibly married may experience a loss of self-confidence and begin to exhibit ambivalent behaviour. In the case of marriages involving minors, parents bear responsibility for the sexual violence involved, and become accomplices in the rape of their child. Many girls or boys in such situations experience powerful feelings of guilt, as well as shame and a sense of having betrayed the family. Sometimes they fear – with justification – that their younger brothers or sisters may be made to pay if they refuse a forced marriage. Deciding to

break with one's family – including one's brothers and sisters – is a hard choice to make, and it often results in a parallel rejection by village communities.

“Those who flee from the family sometimes do so at great cost. A girl who runs away exposes herself to reproach from all her relatives because, through her desire for independence, she has diminished the family's standing in the eyes of friends and neighbours. Young girls who flee refuse to explain why they have done so and they are then accused of being selfish and immoral. If they have to stay away from their families for long periods they often lose contact with other members of their entourage, to whom they are close. Very few girls have a circle of

friends outside the family. When they leave the family their school friends reject them, accusing them of lacking respect for their parents. The notion of freedom, which is often idealised, can prove illusory. The emphasis that is placed in Germany and other western societies on autonomy and individuality masks a reality of isolation and fear of weakness or failure. Independence can come at the same heavy price even for young German girls. They often find themselves in one-to-one relationships in which family patterns are recreated, and they end up making a precipitate return to the family.”¹

1. Bikim Bayam Tekeli, “L'association Papatya et l'accueil des jeunes filles à Berlin”, in *Hommes et Migrations - Femmes contre la violence*, op. cit. p. 110.

Health damage

Forced marriage has many potential medical consequences, ranging from early pregnancy, through HIV infection, to hepatitis B and other sexually transmitted diseases which can be contracted more easily in deflora-

tion. The girls or young men involved may suffer psychological troubles such as sleep problems (including nightmares), eating disorders (typically anorexia and bulimia), behavioural difficulties (including irritabil-

ity, loss of interest in school, running away and even drug addiction), and various somatic disorders (notably abdominal pain). Some individuals lapse into severe depression that can even lead to suicide.

Financial and legal difficulties

Many victims of forced marriage are driven to leave the family home and thus have to deal with the reality

of independence. In order to escape the forced marriage and the clutches of the family they need to find alter-

native accommodation and a source of financial support.



In addition, if the marriage has actually taken place, the person married by force needs to resolve the legal problems of having it annulled or severing the marriage bond, and will also need help with obtaining compensation. Girls or young men may find themselves without identity documents if these have been confiscated by their families.

Clearly, as well as receiving financial and logistic help, individuals who have undergone forced marriage need freedom to exercise their economic, social and legal rights. They also need enabling to defend their human rights and basic freedoms. Governments must be encouraged, on the one hand, to take measures both to prevent and punish forced

marriage and similar practices and, on the other hand, to bring forward policies and action plans specifically aimed at tackling the situations in question and their consequences. It is also essential to ensure that any measures taken are effectively applied.

Partial responses in law, and the limits of the legal approach

The aim in this study has been to compile a sort of inventory of relevant legal provisions in each of the 28 countries reviewed and, most importantly, to consider what effect they have had in preventing or combating forced marriages.

Legal provisions in each of the countries studied were classed under four headings:

- international legal instruments;¹
- private international law;
- civil law;
- criminal law.

1. Regarding international legal instruments, the study covers the 46 Council of Europe member states.

Beyond international legal instruments

Protecting a person from forced marriage is not straightforward, and it is encouraging to note the gradual development of a web of international legal instruments laying down general principles about marriage and freedom to marry, although there are obvious problems with their application. These instruments are listed below.

The Universal Declaration of Human Rights, adopted on 10 December 1948 in Paris by 58 states of the General Assembly of the United Nations, mentions the right to found a family (Article 16 -1):

“Men and women *of full age*, without any limitation due to race, nationality or religion, *have the right to marry and to found a family*. They are entitled to equal rights as to marriage, during marriage and at its dissolution.” Article 16 (2) states further that “Marriage shall be entered into *only with the free and full consent* of the intending spouses.”

The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, reaffirms (Article 12) the universal right to marry, in the following terms:

“Men and women *of marriageable age* have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

Resolution 843 (IX), of 17 December 1954, the General Assembly of the United Nations declared that *certain customs*, ancient laws and practices relating to marriage and the family were *inconsistent* with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights.

The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages,² which came into force on 9 December 1964 in accordance with provisions of Article 6, has been

2. See United Nations Treaty Collection, vol. 521, p. 231.

signed and ratified by Denmark, the Netherlands, Poland, Romania and Sweden, signed by France, Greece, Ireland and Italy, adopted by Austria, Azerbaijan, Germany, Finland, Hungary, Iceland, Norway, Spain and the United Kingdom, and taken over by Bosnia and Herzegovina, Croatia, the Czech Republic, the Slovak Republic and “the former Yugoslav Republic of Macedonia”.

It reaffirms that all states should take all appropriate measures with a view to abolishing such *customs, ancient laws and practices* by ensuring, *inter alia*, complete freedom in the choice of a spouse, eliminating completely *child marriages* and the betrothal of young girls *before the age of puberty*, establishing appropriate *penalties* where necessary and establishing a civil or other register in which *all marriages will be recorded*.

Article 1 (1) states: “No marriage shall be legally entered into without the *full and free consent* of both parties, such consent to be *expressed by them in person after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses*, as prescribed by law.”



Article 1 (2) adds: "Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, *before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent.*"

Article 2 is also relevant: "States Parties to the present Convention shall take legislative action to specify a *minimum age* for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a *dispensation as to age, for serious reasons, in the interest of the intending spouses.*"

Resolution 2018 (XX), of 1 November 1965, recommends that each member state should take the necessary steps to adopt such legislative or other measures as may be appropriate to give effect to the following principles:

"No marriage shall be legally entered into without the *full and free consent* of both parties, such consent *to be expressed by them in person, after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law.*" (Principle 1-a);

"*Marriage by proxy* shall be permitted only when the competent authorities are satisfied that each party has, before a competent authority and in such manner as may be prescribed by law, fully and *freely expressed consent before witnesses and not withdrawn such consent.*" (Principle 1-b);

"Member States shall take legislative action to specify a *minimum age for marriage*, which in any case *shall not be less than fifteen years of age*; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a *dispensation as to age, for serious reasons, in the interest of the intending spouses.*" (Principle 2)

The International Covenant on Civil and Political Rights of 19 December 1966, adopted and opened for signature by the UN General Assembly in Resolution 2200 A (XXI), which came into force on 23

March 1976 under the provisions of Article 49, to which all the member states of the Council of Europe are Parties, except Andorra and Turkey which only signed it – includes the following provisions:

- Article 23 (2): "*The right of men and women of marriageable age to marry and to found a family shall be recognised*";
- Article 23 (3): "No marriage shall be entered into without the *free and full consent* of the intending spouses";
- and Article 23 (4): "States Parties to the present Covenant shall take appropriate steps to ensure *equality of rights and responsibilities of spouses as to marriage.*"

The Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages, signed only by Finland, Portugal and Egypt – states, in Chapter 2 on recognition of the validity of a marriage, that a contracting state may refuse to recognise the validity of a marriage where, under the law of that state:

"[...] one of the spouses had not attained the *minimum age* required for marriage, nor had obtained the *necessary dispensation*; or [...] one of the spouses did not have the *mental capacity* to consent; or [...] one of the spouses did not *freely consent to the marriage.*" (Article 11)

The African Charter of Human and Peoples' Rights, adopted on 26 June 1981, which entered into force on 21 October 1986, and by 1 January 1994 had been acceded to by 49 member states of the Organisation of African Unity, provides:

- Article 4: "Human beings are inviolable. Every human being shall be *entitled to respect for his life and the integrity of his person*. No one may be arbitrarily deprived of this right";
- and Article 5: "Every individual shall have the *right to the respect of the dignity inherent in a human being* and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrad-

ing punishment and treatment, shall be prohibited."

The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27 and has been signed and ratified by many states, including the member states of the Council of Europe except Monaco and San Marino – includes, in Article 16, the following stipulations:

"States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: [the] same right to enter into marriage; [and] the *same right freely to choose a spouse* and to enter into marriage only with their *free and full consent.*"

"The betrothal and the *marriage of a child shall have no legal effect*, and all necessary action, including legislation, shall be taken to specify a *minimum age for marriage* and to *make the registration of marriages in an official registry compulsory.*"

The Universal Islamic Declaration of Human Rights, adopted by the Islamic Council and promulgated by UNESCO on 19 September 1981, states:

"Every person is *entitled to marry, to found a family* and to bring up children in conformity with his religion, traditions and culture" (Article 19-a).

In Islam, marriage is a universally recognised right. Islamic law acknowledges it as the legitimate means of founding a family, ensuring that one will have descendants and maintaining individual chastity, and the Koran contains the exhortation: "O mankind! Reverence your Guardian Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women." (4:1)

The Declaration also states that "*No person may be married against his or her will.*" (Article 19-a). Thus neither boys nor girls may be constrained to marry a person for whom they have no inclination. Sunna Abu-



Daud Book 11 (No. 2091) records: “A virgin came to the Prophet [...] and mentioned that her father had married her against her will, so the Prophet [...] allowed her to exercise her choice.”

Protocol No.7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Strasbourg on 22 November 1984, states (Article 5):

“Spouses shall enjoy equality of rights and responsibilities of a private law character between them *and in their relations with their children, as to marriage [...]*.”

The Declaration of the Organisation of the Islamic Conference, adopted in 1990 in Cairo, reads:

“The family is the foundation of society, and marriage is the basis of its formation. Men and women have the *right to marriage*, and no restrictions stemming from race, colour or nationality shall prevent them from enjoying this right” (Article 5).

The Declaration adopted in Bamako on 29 March 2001 by French-speaking African Ministers with responsibility for child protection recalls that, “the consent of concerned subjects must be freely demonstrated. If not so, the marriage is invalid and every sexual act must be considered as sexual violence.”

Council of Europe Committee of Ministers Recommendation Rec(2002)5, to member states on the protection of women against violence and its explanatory memorandum, is also relevant.

All these declarations, conventions, resolutions and recommendations, representing as they do forms of international “summary jurisdiction”, give grounds for hope. Taken together, they suggest the emergence in the different countries of a degree of standardisation around a straightforward concept – that everyone has the right to marry and found a family, that child marriage (i.e. where a spouse is not yet of marriageable age) cannot be permitted and that all marriages require the free and full consent of the future spouses, expressed in person before a competent authority in the presence of witnesses – but it would be wrong to assume that this in itself can effectively guarantee freedom and choice with regard to matrimony.

All the countries reviewed have signed and ratified at least two, and in some cases more than two, relevant international agreements. And while forced marriages in the so-called “immigration countries” tend to take place among communities who originated in the Maghreb, other parts of Africa, India, Pakistan, Vietnam or Turkey, it is important to emphasise that these countries, too, have committed themselves to respect for human rights. Algeria, Morocco, Tunisia, Turkey and Senegal, for example, have signed and ratified the

International Covenant on Civil and Political Rights. Cameroon, Congo, Côte d’Ivoire, Mali, Somalia, India and Vietnam have adopted the same agreement. Only Mauritania and Pakistan have neither signed nor ratified it. The Convention on the Elimination of All Forms of Discrimination against Women has been signed and ratified by Tunisia, Congo, Cameroon, Senegal, Côte d’Ivoire, India and Vietnam. Turkey, Pakistan, Mauritania, Morocco and Algeria have adopted it. Somalia has neither signed nor ratified it. Many of the countries in question are also signatories to the African Charter of Human and Peoples’ Rights of 26 June 1981, the 1990 Declaration of the Organisation of the Islamic Conference, or the Bamako Declaration of 29 March 2001.

Today, absence of coercion to marry and respect for marital capacity have thus become for the majority of these countries – notably by virtue of their commitment to the principles of international instruments for the protection of human rights and fundamental freedoms – the primary values and criteria for assessing individuals’ behaviour in family relationships. Freedom to marry, independent choice, and the rejection of early marriage are clearly essential, and anything that compromises those principles must be rejected. In addition to this international level of protection, marriage is governed by specific domestic provisions in each country and by the rules of private international law.

Forced marriage and international private law

The question of forced marriage is related to an issue that has preoccupied jurists for a number of years: how to take account, in the context of private international law, of family practices that are unlawful under such law, being dictated by laws and customs that disregard private international law.

National judicial and administrative authorities dealing with such situations³ may have to apply rules substantially different from the corresponding provisions in their own legal systems, or may have to determine the effects in their domes-

tic law of unions that breach the key principles enshrined in the agreements protecting human rights and fundamental freedoms. In modern Europe, half a century after the United Nations General Assembly adopted the Universal Declaration of Human Rights and the agreements that followed on from it, the legal position of immigrant families constitutes, to some extent, a test of their implementation.

The question of forced marriage is covered by the area of family law concerned with “personal status”, an area in which the western legal tradition

has come into conflict in recent years with the legal traditions of other parts of the world. There are, moreover, significant differences between national legal systems as to how they treat “personal status”. In Muslim countries, for example, the concept embraces the property relationships between couples and such matters as inheritance and gifts, which fall outside the scope of “personal status” provisions in most EU countries.

Differences in “personal status” law are a source of complication with regard both to classifying given situations and to determining what law



should apply and how, if a “public policy exception” is made, the foreign law is to be applied. Moreover, courts may employ different approaches to a given question to achieve what are sometimes similar results. Inevitably all this has repercussions on the rules of private international law and creates legal uncertainty both for the public and for legal practitioners.

In some foreign countries, reference is made to customary or religious law systems that are inconsistent with the key principles informing the international legal instruments.

In seeking solutions to conflicts of law or custom, courts may use the imperative of public policy to justify rejecting a law or custom that is at odds with the criteria for protecting human rights and fundamental freedoms, or to affirm rules based on other criteria, such as the interests of a child.

Forced marriage raises all sorts of questions about the choice-of-law rules applicable to contracting of marriages. We have to draw a distinction here between formal requirements and substantive requirements. In settling choice-of-law questions concerning the substantive requirements for marriage, some countries, including Belgium, Germany, France, the Netherlands, Luxembourg, Italy and Greece, give preference to the law of the country of nationality. Other countries – the UK, Malta and the Common Law and Scandinavian countries – apply the law of the country of residence. In Spain, future spouses may choose between their own national law and the law of their country of residence. In Switzerland, choice of law depends on the circum-

stances.⁴ Where the persons wishing to marry are of different nationalities, the law that will govern their relationship must be determined, and the national laws may apply cumulatively as in Germany or distributively, in that each future spouse is subject to his or her own national law, as in France. With regard to formal requirements, most countries opt for the law of the state where the marriage is contracted. This is true of Belgium, Croatia, France, Luxembourg, Malta and Switzerland. In Germany, for family marriage ceremonies, the exception provided for in Article 13, sub-section 3-1 of the Introductory Act to the German Civil Code (EGBGB) must be observed. Finland, Portugal and Egypt signed the Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages, the first chapter of which sets out the requirements for celebrating a marriage in a contracting state, namely:

“The formal requirements for marriages shall be governed by the state of celebration” (Article 2); “a marriage shall be celebrated where the future spouses meet the substantive requirements of the internal law of the state of celebration and one of them has the nationality of that state or habitually resides there, or where each of the future spouses meets the substantive requirements of the internal law designated by the choice-of-law rules of the state of celebration” (Article 3); “the application of a foreign law declared applicable by this Chapter may be refused only if such application is manifestly incompatible with the public policy [...] of the state of celebration” (Article 5); “a contracting state may reserve the right, by way of derogation from Article 3, sub-paragraph 1, not to apply its internal law to the substantive requirements for marriage in respect of a future spouse

who is neither a national of that state nor habitually resides there” (Article 6).

In Portugal, Article 50 of the Civil Code stipulates that the form of marriage is governed by the national law of the state in which the marriage is celebrated, with exceptions provided for in Article 51,⁵ under which a marriage may be celebrated in the presence of a diplomatic or consular representative or a Catholic priest.

The fact is that the “marketplace” of inter-family exchange has spawned numerous rules which may be recognised in the national law of one country but unknown in that of another. In deciding what choice-of-law rules to apply to a given question, lawyers first need to classify or categorise the issue at stake.⁶ Some foreign institutions fit easily into the categories of the particular national law system, while others pose especial difficulties. For example, marriage by proxy in Portugal is prohibited in Croatia; the matrimonial “guardian” (*wali*), who under Algerian law represents the woman and consents on her behalf, is an institution unrecognised in French, German or Italian law; and there are other such examples. The question this raises is whether marriage by proxy is a substantive or a formal requirement, and likewise with regard to the *wali*. All this is not unrelated to the problem of forced marriage and specifically to the principle, enshrined in international law, that consent must be given freely and in person.

In other words, once the problem of classification has been resolved (i.e. when the court has succeeded in identifying a given institution) it is possible that the choice-of-law rules, determining what legal system to apply to the situation, will result in applying foreign legislation permitting marriage under the age of 18, or marriage by proxy – thus raising a question about the importance attached to free will at the moment of consent to marriage. In such a situa-

3. It should be noted in passing that, since 1 March 2001, the member states of the European Union, with the exception of Denmark, have been subject to Council Regulation (EC) No.1347/2000 of 29 May 2000, sometimes referred to as “Brussels II”. The Regulation supplants national provisions, under the principle that international law takes precedence over domestic law. It deals with conflicts of law where the issue is one of jurisdiction, but not with which country’s law is applicable to the substantive issues of the case, which continue to be covered by each country’s domestic legislation. It contains a restrictive list of alternative and ranked criteria for use in conflict-of-law situations. See in France, Decree No. 2005-460 of 13 May 2005 on competences of civil courts, on civil procedure and on judicial organisation.

4. Under Article 44 (1) of the Federal Private International Law Act (LDIP) of 18 December 1987 (version as at 1 June 2004), “the substantive requirements for the celebration of marriage in Switzerland shall be determined by Swiss law”. If the requirements under Swiss law are not met, a marriage between foreigners may nonetheless be celebrated provided it meets the requirements of the law of the country of nationality of one of the fiancés (Article 44 (2)). The form of marriage celebration in Switzerland is governed by Swiss law (Article 44 (3)).

5. For more details see Appendix 2: Working documents – Portugal.

6. On this question see E. Rude-Antoine “Le droit international privé et les migrations maghrébines” in E. Rude-Antoine (ed.), *L’immigration face aux lois de la République*, Paris, Karthala, 1992, pp. 111-129.



tion, two foreigners living in a country where the substantive requirements for marriage have been ruled to be those of the spouses' national law, and who are being married before a competent authority, must prove compliance with the requirements under their national law in respect of age, capacity and consent. If they are both of the same nationality, the law applicable will be their shared national law. If they are of different nationalities, the most common solution is distributive application of the relevant systems of law.

The next question is on what condition foreign law – permitting, for example, people to marry younger than the marriageable age of the country where the marriage is contracted – may be recognised in that country. For instance, could a marriage contracted in Sweden between a 16-year-old Portuguese national and a 18-year-old Swedish girl living in Sweden be valid, even with parental authorisation, given that the marriageable age in Sweden is 18 for girls and boys. How can the Portuguese marital capacity rule be consistent with the Swedish national legal position?

Under private international law foreign law is commonly set aside if applying it would produce situations inconsistent with basic principles of public policy. Public policy thus takes precedence over foreign law. In the example above, the Portuguese rule allowing a boy to marry at 16 years of age would be inconsistent with Swedish public policy, and the registrar ought not to celebrate the marriage, as it could be annulled by a Swedish court.

Similarly, the marriage of a 16-year-old Romanian girl to an 18-year-old Romanian husband – which would be consistent with Romanian rules on marital capacity – would not be valid in Sweden where neither girls nor boys may marry under the age of 18.

On the contrary, in Germany for example, according to conditions under paragraph 1303, sub-section 2 of the Federal Civil Code (*Bürgerliches Gesetzbuch* – BGB), the marriage of a 16-year-old Romanian girl to an 18-year-old Romanian husband would be

valid, as the two future spouses have marital capacity under the Romanian law. In that case, the marriage is recognised, while it violates German public policy (Article 6 EGBGB). Violation of German public policy is not admitted, as German laws authorise marriage under 16 years on certain conditions.

Referring a matter to public policy does not alter the fact that Romanian law provides for discriminatory treatment as between boy and girl. The same form of discrimination exists in family law in Luxembourg. In practice, gender-based discrimination arising from the application of foreign law is preventable by means of the “public policy exception”: registrars can refuse to apply discriminatory foreign rules.

At the same time, the public policy exception should not be applied systematically. In other words, it should depend on the circumstances of each case, even in situations clearly inconsistent with basic principles of the state where the marriage is to take place. Recourse to the public policy exception, on the basis of a hierarchy of interests, is not always a completely effective solution inasmuch as it can produce equivocal situations – valid under the law of one state but not under that of another.

In a memorandum of 5th July 2005, the Ministry of Children and Family Affairs suggest that a marriage contracted abroad, where one or both spouses is below 18 years old or if the marriage is contracted by proxy, shall not be valid in Norway. This proposal is suggested to be valid for all Norwegian citizens and persons who are resident in Norway. The intention is to prevent child marriage and forced marriage. To prevent serious negative impact due to lack of acknowledgement of a marriage the Ministry has proposed a possibility for approval of the marriage as valid if there are strong reasons. Either spouse may seek an annulment if he or she was forced into concluding the marriage. Some people may prefer a divorce. For that reason, the Ministry in the same memorandum suggest that a spouse or both spouses may demand a divorce directly without been separated for at least one year if he or she

was forced into concluding the marriage.

The choice-of-law rule that gives precedence to spouses' national legal systems is therefore unsatisfactory. As noted above, there are other countries where the choice-of-law rule gives precedence to national law, or to the law of the country of residence, and lawyers have suggested that this is a better solution in terms of the principle of equality. In many European countries, families from immigrant backgrounds, and particularly women whose national family-law systems discriminate against them, prefer to see local law applied, considering that it affords them greater protection.⁷ In the eyes of some jurists, however, this option amounts to the compulsory integration of foreign communities. It is justifiable in the case of families who have lived for many years in a foreign country, particularly if there is a connection of proximity between the disputed situation and the law of the country of residence. But that still leaves the problem of recognition abroad of legal measures inconsistent with the law of the country of nationality. Other states have opted to let the persons concerned choose the law that will govern their family relationship. This is a solution that recognises legal pluralism and shows greater willingness to take distinctive features of foreign legal systems into account. A further solution is to leave the choice of applicable law to the courts. In some cases, courts may use different choice-of-law criteria in recognising a legal contract as valid. To take the example of a marriage contracted in London between two British nationals and celebrated by a British minister of religion (i.e. without the involvement of a civil authority of the state), some non-UK courts will recognise such a marriage on the grounds that it is valid under the law of the country where it took place and others because it is valid under the national law of the spouses or that of their place of residence.

7. E. Rude-Antoine, “La coexistence des systèmes juridiques différents en France: l'exemple du droit familial”, in P. Kahn (ed.), *L'étranger et le droit de la famille - Pluralité ethnique, pluralisme juridique*, Paris, La documentation française, 2001, pp.147-181.



The question here is what choice-of-law solution would be most appropriate in terms of prevention, i.e. protecting every individual against unwanted marriage. While giving people the right to choose might seem the best solution, particularly

for families who maintain close ties with their country of origin, the current trend among legal practitioners is to seek application of the law of the country of residence, which would seem to afford greater protection. It would also seem to place greater

emphasis on compliance with undertakings on human rights and fundamental freedoms – where a European country's family law system has provision for doing so.

Forced marriage and civil law

In addressing the issue of forced marriage from the standpoint of civil law, we need to consider the applicable rules in family law, the substantive and formal requirements and their effects in terms of marital capacity, consent to marriage, the celebration of marriage and the annulment of marriage.

Most national legal systems make 18 years the minimum marriage age. This is the case in Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Estonia, Finland, Germany, Hungary, Italy, Latvia, the Netherlands, Norway, Poland, the Slovak Republic, Sweden, Switzerland and the United Kingdom. In Malta, people may marry from the age of 16 although paradoxically the age of consent to sexual intercourse is 18. In Turkey, legal age for marriage is 17 years for both girls and boys. In Portugal, where the age of majority is 16 years, that is also the minimum age for marriage. The fact of an intending spouse being aged under 16 is an absolute impediment to marriage. While 18 years is the legal age for marriage in Ireland, an Act of 1995 provides that a court may authorise the marriage of minors under 18 years on certain conditions.

In some countries there is still a difference between the marriageable ages for girls and boys. That is so in France⁸, where the minimum age for boys is 18 years and for girls 15 years, and in Luxembourg and Romania, where the respective ages are 18 and 16.

At the same time, certain countries allow the authorities to make exceptions to the age requirement for serious, special or exceptional reasons. Courts in Bosnia and Herze-

govina, the public prosecution service in France, the Grand Duke in Luxembourg, and civil-court judges in Ireland may thus authorise marriage from the age of 16 years; it can be permitted from 15 years of age by the mayor's office in Bucharest or county councils in Romania; and in Finland the Justice Ministry may allow persons under 18 to marry if there are special reasons for it. Before an exception can be made, the person legally responsible for the under-age spouse must be consulted if his or her view could be material to the decision. In Germany, family courts may exceptionally authorise a marriage where one of the parties is of marriageable age and the other is in his or her sixteenth year. In Hungary, young people may marry from the age of 16 subject to special permission from a court and in exceptional circumstances only. In Poland, if there are serious grounds for doing so, a guardianship court may allow an under-age spouse to marry where, in the circumstances, the intended marriage would be in the interests of the families. Similarly in Turkey, a court may decide on exceptional and proven grounds to permit 16 year-old boys and girls to marry. In such cases the court is required, wherever possible, to consult the father, mother or legal guardian. In Italy, a judge sitting in chambers may agree to a marriage involving a spouse aged 17 – where that person has made an application to the court – on the basis of an assessment of his or her physical and intellectual maturity, and after consultation with the public prosecution service and the parents or guardians. In Cyprus, minors can be allowed to marry from age 16 if there are weighty reasons for it. In the Slovak Republic, too, if the minor has reached his or her 16th birthday, the courts may permit the marriage if there are serious reasons for doing so.

In Norway, the Ministry of Family and Children Affairs suggest, in a memorandum of 5 July 2005, that The County Governor shall not be able to give dispensation for marriage if the couples are below 16 year-old.

Where an intending spouse is under age, permission from a parent or legal representative may also be required. This is the case with minors aged 16 or above in Belgium, Croatia, France, Latvia, Luxembourg, Malta, Portugal, Switzerland, Turkey and the United Kingdom, and with minors aged 15 or above in Estonia⁹. In Belgium parental consent must be registered by a youth court. In Norway, minors under 18 years require a parent's consent and the County Governor's authorisation in order to marry. The County Governor may only give permission where there are special reasons for contracting a marriage. The main rule is that approval is not given to a person under 17 year.

If parents refuse consent or are incapable of giving it, a court may authorise the marriage. In Belgium there is a provision to this effect where the court regards the parental refusal as unfounded. Courts assess such situations case by case. They may authorise the marriage of a minor if his or her parents fail to appear or cannot indicate their view. In Croatia, permission may be granted if the court establishes that the minor is sufficiently physically mature to assume the rights and duties resulting from marriage, and after consultation with the minor making the application and his or her parents or guardians. In Estonia, a court may authorise a marriage at the request of the other parent, or the person with parental authority, if the marriage is in the minor's interest. In

8. In the framework of the proposed act to combat violence against women, the age of marriage for women is increased to 18 years. This proposed act will be very soon submitted to the Senate.

9. The new Family Act, currently under discussion, will bring changes into the regulation of the exceptions in the legal age of marriage.



Germany, if the minor's legal representative refuses consent without good reason the minor may apply to the court for a ruling that will take the place of parental consent. In Switzerland, a minor prevented from marrying may ask the court to set aside the refusal of his or her representative. In Norway, where persons with parental authority refuse to consent to a marriage, the chief county administrative officer may nonetheless authorise it if the refusal is unfounded. Similarly, in the UK, if consent is unreasonably refused or cannot be obtained, a court ruling will be sought.

It should be noted that many countries do not maintain registers of births, deaths and marriages, which makes it impossible to check the age of persons getting married or to obtain birth certificates.

Consent itself is mentioned in only a few pieces of law in the countries studied. With the exceptions of Austria, Malta and the Netherlands, where the information received gave no indication of the relevant provisions, all the other countries lay down, in various forms of words, that consent of the future spouses is a prerequisite for validity of a marriage. The Belgian, Spanish, French and Luxembourg codes state that there is no marriage without consent. In most cases, however, consent is not clearly defined. At best, we find various stipulations. In Cyprus, for example, the "free and full consent of the spouses" is required; in the Czech Republic consent must be "free, full and mutual" – we find a similar formula in Latvia, Portugal, and Switzerland, where marriage depends on "mutual consent", and in the United Kingdom, where the law requires "free consent"; German law states that consent must be "free and voluntary"; in Italy it must be "free, informed, real and unfeigned", a formula echoing that of Romania, which requires "informed and free" consent; and in Bosnia and Herzegovina emphasis is placed on "the free will of the parties". Norwegian law not only requires "free consent" but also provides a means of checking that this condition has been met inasmuch as the administration can interview the intending spouses in order to verify

that they are marrying of their own free will. In Poland, consent must be manifest as "a concerted wish". In Estonia, a marriage is contracted on the mutual desire of the intending spouses. In other words, all these legal systems reflect the principles laid down in the body of international law.

There is also reference in national law to the free and full consent of the two parties, expressed in person in the presence of the authority empowered to celebrate the marriage and of two witnesses. In Belgium, France, Germany and Switzerland the presence of the registrar is required; in Romania, consent must be expressed "personally and publicly in the presence of the competent official"; in Denmark, "by presenting themselves together and in person before the relevant authority and by declaring their intention to marry"; in Latvia the requirement is for the "presence of the future spouses and two adult witnesses before the representative of the general registry"; Hungary requires "the presence of both parties at the marriage registry"; in Luxembourg consent must be given "publicly before the registrar"; in Estonia it must be expressed "in person at the same time"; the Slovak Republic requires it to be made "publicly and solemnly in the presence of witnesses"; in Sweden it must be given "personally and at the same time, before the registrar"; Portugal stipulates that it must be "strictly personal"; and Finnish law requires that "the couple be present together at the marriage ceremony".

Marriage is thus celebrated before an authority. The formal requirements in this respect differ from country to country. In some systems, civil marriage is compulsory. Others, such as Bosnia and Herzegovina, France and Germany, permit religious marriage if it is preceded by civil marriage. A third group of countries, including Croatia, Italy, Portugal and the Slovak Republic, allow future spouses to choose between religious and civil marriage. In Poland the marriage may take place before the senior registrar, with the spouses manifesting their concerted will to marry in the presence of two adult witnesses, or it may be con-

tracted before a minister of religion. In the latter case the spouses make two separate declarations, one for the civil union, the other for the religious one. They agree to be bound simultaneously by ecclesiastical law and the family and guardianship law. Ireland permits civil marriage in the office of the registrar of marriages or religious marriage in church, after compulsory notice to the registrar three months before the marriage. In Norway, the officials competent to celebrate marriage are public notaries, clergies of the state church or ministers of other denominations, officials of humanist or recognised non-religious organisations that receive public funding, persons authorised by the Ministry in cases where it is necessary due to long distances or other reasons. In the latter case, the appointment is made for four years. Before any marriage celebrated in Norway, all couples must verify compliance with conditions for marriage with the Registrar.

In the UK various forms of marriage ceremony are permissible.

A marriage may be celebrated according to the rite of the Church of England, in the presence of a member of the clergy and between 8 am and 6 pm, following the ceremony set out in the official liturgy. At least two witnesses are required. Three formalities precede the ceremony, namely publication of the banns, receipt of a marriage licence and receipt of a registrar's certificate.

Marriages may also be celebrated according to non-conformist rites on condition that the building used meets certain legal stipulations and that a certificate or licence has first been duly obtained. A registrar need not be present at the ceremony.

Marriages celebrated according to the rites of certain religious sects, and Jewish marriage, are also permitted. In such cases a registrar's certificate must be presented before the ceremony. Quaker marriage may be celebrated in any meeting place, even if it lies outside the territory of the registry responsible, and the same applies to Jewish marriage.

Civil marriage is another option – in the registrar's office in the presence of two witnesses. The spouses will be questioned about their inten-



tion to contract the marriage, and a certificate is required. Purely civil marriage is common nowadays. It is a fully effective procedure in itself and no religious ceremony is necessary.

While few countries permit marriage by proxy, Croatia having outlawed it, others continue to allow it. In Portugal, for example, it is legal. One of the future spouses may delegate authority to an appointed representative: in order to do this it is sufficient to go to a notary and express one's consent. The notary then draws up a proxy document. This must contain specific authority to contract the marriage and state how it will take place. The proxy becomes invalid if it is revoked or if the mandating individual or the representative dies or becomes incapacitated. Marriage by proxy is also practised in the Czech Republic, in Morocco and in Algeria. Ireland does not permit marriage by proxy; the two spouses must be present, together with two witnesses.

As noted above, consent to marry depends simultaneously on psychological intent – inner commitment – and on a declaration of intent at the time the marriage is contracted. Consent given where the person concerned lacks marital capacity is thus void (see the laws of Belgium, Hungary, the Czech Republic, Italy, Luxembourg, Norway, Romania, the Slovak Republic and the UK), and in cases where an individual's mental condition is impaired consent is simply non-existent. This is made explicit in the legislation of Belgium, Germany, Croatia, France, the Czech Republic, the Slovak Republic, Poland, Portugal, Romania, Latvia, Norway, Switzerland, Turkey and Italy. In the majority of countries studied, however, the key factor in determining whether or not a marriage should be annulled is that of true, inner, unvitiated assent. Someone's not offering any obvious resistance does not necessarily signify that they consent. Factors that can overcome inclination to resist but invalidate the "consent" include the following: in Belgium, France, Malta, Romania and Sweden, violence; in Italy, "violence and fear of causing disappointment through failure to contract [the marriage]"; in Bosnia and Herzegovina and in Poland, use

of threats; in Poland, "criminal threats"; in Latvia, duress; in Croatia, "unjust threat"; in Sweden, "pressure applied by means of threat or violence"; in the Czech Republic, "physical constraint"; in Portugal, "physical and moral constraint"; in Germany, "constraint and threats"; in Spain, "constraint and threats of serious danger"; in Cyprus, fear; and in Switzerland, "serious and imminent threat to [one's] own life, health or honour or those of a relative". The legislation on grounds for annulment in Luxembourg, Norway and the UK refers only to "vitiated consent".

In Belgium, deferential fear of one's father and mother is not in itself regarded as a sufficient ground for annulment. Maltese courts, on the other hand, have included that concept in their definition of violence. Fear of a parent or guardian may vitiate consent and render the marriage void.

Error with regard to a person's identity or essential qualities is a further ground for annulment on the basis of vitiated consent. It is recognised in Malta and Poland; in Spain, where the law refers to "marriage contracted on the basis of error regarding a person's identity or qualities and which had a crucial bearing on the consent"; in Switzerland ("if [a person] contracting a marriage has been deliberately misled with regard to the spouse's essential personal qualities"); in France ("in the case of error with regard to a person's identity or essential qualities"); and in Portugal ("when one of the spouses has mistaken the other's identity"). Assessing whether such an error has taken place, and thus whether marital intent was lacking, is at the sole discretion of the court. In Turkey, either spouse may apply for annulment of the marriage where he or she has "made a declaration of erroneous consent to marriage on the ground either that he or she did not wish to marry or that he or she did not wish to marry the person who became his or her spouse (Article 149), or "he or she was mistaken about his or her spouse" (Article 149.1).

Simulation, or sham marriage, also constitutes grounds for annulment. In France and Belgium simulation has been enshrined in law as a

ground for absolute nullity of the apparent marriage. For there to be simulation, the parties must jointly have feigned exchange of consent and have in no way intended it to have effect. Similarly, Bosnia and Herzegovina, Latvia and Romania have provisions for annulment where "the marriage was contracted with the fictitious intention of creating a family".

It would be extremely valuable to study the case law of each of the countries reviewed to see what criteria and indicators the courts apply in deciding whether or not marriages should be annulled. For example, the concept of "cohabitation" after marriage, which the courts use in certain countries including France, requires close scrutiny.

This is clear from a judgment by the regional court of Dax (France), delivered on 6 November 2002, and the subsequent judgment of the Pau court of appeal (2nd chamber, section 2) of 26 April 2004.¹⁰ The courts refused a young Moroccan woman's application for annulment of her marriage and found that a legal status acquired non-fraudulently in another country should be given effect in France in accordance with the legal system competent by virtue of private international law. The facts of the case were that a marriage had taken place in Morocco between a French national and a Moroccan girl under the age of 15.¹¹ The lower court pointed out that both French law and Moroccan law permitted exceptions to the rules on minimum age. A Moroccan court had in fact made such an exception in the interests of a minor, in accordance with Moroccan law. The young woman was applying for annulment on the grounds of absence of consent (under Articles 146 and 180 of the Civil Code). The judges found, however, that consent had in fact been received and was confirmed by two years' cohabitation.

10. *Juris-Data*, No. 2004-242710.

11. Under the traditional Moroccan Mudawana, or Family Code, marital capacity is acquired at 18 years of age for men and 15 for women, but Article 19 of Act No. 03-70 amending the Family Code provides: "Capacity to marry is acquired by men and women in full possession of their mental faculties on reaching the age of 18 Gregorian years."

Under Article 185 of the Civil Code, also, an application for annulment on the basis of Article 144 of the code was inadmissible if more than six months had elapsed since the spouse applying had reached marriageable age.

A further possibility under civil law in some countries (including France) is compensation for non-material injury, from a victim indemnification fund. An award of that kind was made by the Evreux regional court on 7 May 2002 and upheld by the Rouen court of appeal (1st chamber, section 1) on 20 July 2004¹² in response to a claim by a victim. The girl who brought the case had been rejected by her family because she had had a relationship with a non-Muslim and had refused to marry a Turkish national. Her family considered that she had shamed the community and had behaved unworthily. She had lived in fear at the time, subsequently she had been under threat of further violence, and there had been a murder attempt. The court found that all of this constituted non-material harm for which compensation was required.

The concept of marital capacity thus raises the question of the law's impact with regard to early marriage or child marriage. To tackle the problem of child marriage, some countries do, in fact, plan to raise the minimum marriage age. Others take the view that to do so would have no impact on child marriage.

That is the Estonian view. While eyebrows may be raised at Estonian law permitting marriage between minors aged 15-18, and there is a strong argument for bringing Estonian law into line with other Council of Europe countries, the national position is that that is irrelevant to freedom to choose a spouse and the requirement that marriage be entered into freely and with full consent. The Estonian authorities point out that authorisation by both parents or the guardian of the minor is a prerequisite for marriage at those ages.

Similarly, with regard to the situation in Turkey, Saye Petek Galom, Chair of the association "Elele", argues that raising the marriageable

age would change nothing: "In those societies, a child is not regarded as having reached adulthood until he or she has married."

That would seem to be the situation in India, where early marriage continues to be practised despite legislation enacted to prevent it. Special Acts have been passed laying down conditions governing marriage, notably with regard to marital capacity. Under an Act of 1978 the minimum age of marriage is 18 for women and 21 for men. This Act, reforming the Child Marriage Restraint Act 1929, under which the minimum ages were 15 and 18 respectively, has not had the expected effect on practice within families, which – on the evidence of the quantitative data discussed earlier – continue to arrange unions involving very young partners, and indeed to compel them to marry. It is a fact that many societies deny the existence of adolescence: a girl becomes a woman at puberty, without any transitional phase. On that basis, as the UNICEF report points out,¹³ there is no impediment to marriage at a very young age. According to the report, this loss of adolescence is a core factor in trauma experienced by the victims of early marriage (and, by extension, of forced marriage, since youth implies that there cannot be consent). In practice, according to an official report on forced marriage for the British Home Office,¹⁴ most brides in India move in with their in-laws, where they have a central role to play. Once a young woman is installed in such situation she will find it very hard to take the steps required to seek annulment of her marriage. Moreover, embarking on such a procedure would discredit her own family, and she could not rely on their support. In many of the countries where forced marriage continues to be practised, legal provisions on the subject have no more than symbolic value.

Nonetheless, it is clearly appropriate to encourage all states to amend their legislation by making 18 years

the minimum legal age for marriage. Firstly, this is in line with the range of international undertakings that states have signed up to. It would also remove the gender discrimination currently found in legal systems that maintain different marriageable ages for boys and girls. Another point to emerge is the urgent need for all countries to keep registers of births, deaths and marriages so that spouses' marriage dates can be checked as well as their dates of birth. It is also necessary to close off the option of marriage by proxy, which is currently still available in many countries.¹⁵ Finally, governments could usefully be steered towards the Norwegian solution, enshrined in Act No. 47 of 4 July 1991, under which either spouse may apply to the courts to have a marriage invalidated if he or she was forced into concluding it.

It should be borne in mind, however, that the ineffectiveness of the law lies not in its content but in its implementation. Victims fail to report the abuse that they suffer either because they are ignorant of the law or because they believe that family problems should be solved within the family. It is also important to emphasise that, under most countries' legal systems, applications for annulment on the grounds of failure to observe the rules on marital capacity, absence of consent or vitiated consent can be made only by the victim, and that there is a very short limitation period. These are some of the

15. The new Moroccan Family Code provisions under Act No. 03-70 have not outlawed marriage by proxy. Under Article 17, "Marriage shall be concluded in the presence of the parties. A proxy may, however, be appointed for the purpose, subject to authorisation by a court and to the existence of particular circumstances preventing the party mandating the proxy from concluding the marriage in person. The mandate must be an authenticated document or private agreement, duly signed by the mandating party, who must be of adult years, with full civil capacity and, where he or she is a matrimonial representative, must meet the requirements for performing that function. The mandating party must confirm by signature in the mandate the name of the other party to the marriage, the information identifying that party and any other information considered useful for inclusion. The mandate must mention the amount of the dowry payable in advance and at term. A magistrate must certify the mandate, having confirmed that it meets the stipulated conditions."

13. UNICEF, "Early marriage", op. cit.

14. See <http://www.homeoffice.gov.uk/docs/forced.html>: "The report of the working group on forced marriage", compiled at the instigation of the Home Office Minister for Community Relations, pp. 7 and 15.

12. *Juris-Data*, No. 2004-248626.



reasons why legal rules have been ineffective in combating forced marriage. Questions also need to be asked

about the effectiveness of the penalties for infringing the rules. In addition to civil remedies, are criminal

proceedings a possible solution to the problem? That is the question addressed in the following section.

Forced marriage and criminal law

Few countries have made forced marriage a specific criminal offence. In Norway: "Anyone who forces another person to conclude a marriage through recourse to violence, deprivation of liberty, undue pressure or other unlawful behaviour, or through the threat of such behaviour, shall be guilty of the offence of forced marriage. The penalty shall be imprisonment for a period of up to six years. Accomplices shall be liable to the same penalty" (Article 222 (2) of the Criminal Code).

This criminal-law provision forms part of a Norwegian Government programme to combat forced marriage. The aims are to prevent forced marriage of minors and to help and support people exposed to unions of this type. The Norwegian legislation includes in its definition of forced marriage all forms of unlawful behaviour designed to compel a person to conclude a marriage. It is thus the special intent – the particular purpose – that defines the offence and distinguishes it from others. The wording is broad inasmuch as it encompasses violent acts, deprivation of liberty, threats and pressures – all punishable under Norwegian law. Making forced marriage an offence in its own right means that it can be punished more severely and the penalties applicable may be cumulative, which would not be an option in proceedings taken on the basis of "ordinary" charges.

It should be noted that, under some systems of criminal law, certain forms of marriage – notably marriages of convenience – constitute an offence: in Malta, for example, marriage of convenience is a crime punishable by imprisonment. Furthermore, although the term "forced marriage" is not explicitly mentioned, threats, abduction and having sexual relations with a person without his or her consent all constitute offences.

Similarly, in Germany, the amendment introduced in paragraph 240, sub-paragraph 4-2 No. 1 of the Criminal Code (*Strafgesetzbuch*, StGB) by

Law No. 37 amending the Criminal Code, which entered into force on 19 February 2005, expressly cites forced marriage as an example of a particularly serious case of duress, carrying a prison sentence of at least six months and up to five years. Trafficking in human beings for the purpose of sexual exploitation gives rise to a harsher sentence (paragraph 232 of the StGB).

In most countries forced marriage can be punished by means of the penalties for the various forms of criminal behaviour it can involve. This is the situation in Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Finland, France, Hungary, Italy, Luxembourg, Malta, the Netherlands, Poland, the Slovak Republic, Romania, Spain, Switzerland, Turkey and the United Kingdom. Categorisation of the relevant offences differs widely from one country to another but they include rape, attempted rape, physical and psychological violence, sexual violence, bodily harm, threatening with a weapon or dangerous object, ill-treatment, trespass to the person, indecent assault, false imprisonment, infringement of freedom and integrity, psychological duress, sexual duress, kidnapping and abduction, offences against the person, infringement of sexual integrity, honour crime, etc.

In Austria there is a criminal offence of rape of a partner, and proceedings can be taken on that basis in cases of forced marriage.

In Bosnia and Herzegovina Article 221 of the Criminal Code punishes rape within marriage, defined as involving force or the threat of direct assault. No mention is made of situations where psychological duress is exercised. Under paragraph 1 of Article 236 of the same code, a natural parent, an adoptive parent, a guardian or another person who abuses a minor or acts in excess of his or her rights and fails to fulfil his or her duty of care vis-à-vis a minor commits neglect and is liable to a prison sen-

tence of three months to three years. Paragraph 1 of Article 237 provides that anyone who, in total disregard of his or her family obligations under the law, leaves a family member incapable of taking care of himself or herself in a difficult situation is liable to a prison sentence of three months to three years. If the family member dies or is seriously harmed as a result of their action as defined under paragraph 1, the prison sentence incurred is between one and eight years (paragraph 2). On determining the sentence, the court may in addition order the offender to fulfil his or her obligations towards a minor (paragraph 3).

In Croatia, violence and rape are crimes under ordinary law but the main provisions under which forced marriage can be penalised are found in Chapter 14 of the criminal code, dealing with "criminal acts directed against sexual freedom and sexual morality". Rape was recently redefined in Croatian law to include any sexual act or the equivalent committed by force, through the abuse of authority or under coercion. This implies that rape may be committed within marriage. The criminal-code chapter on criminal acts directed against sexual freedom and sexual morality thus includes the offence of rape as described in Article 188: "Anyone who constrains another person by force or by threat to that person's life, or who falsely imprisons another person, for the purpose of engaging in sexual relations or activity equivalent to the sex act shall be liable to imprisonment for between one and ten years. Anyone who commits a criminal offence of the type described in the first paragraph of this article with particular cruelty or humiliation, or is one of a number of individuals engaging at the same time in more than one sex act, or the equivalent, against the same person shall be liable to the penalty of imprisonment for a period of at least three years. If the commission of a criminal offence of the type

described in the first paragraph of this article causes the death of the person raped, or severe damage to his or her health, the perpetrator shall be liable to the penalty of imprisonment for a period of at least three years. If a criminal offence of the types described in the second or third paragraphs of this article is committed against a minor, the perpetrator shall be liable to the penalty of imprisonment for a period of at least five years. If the commission of a criminal offence of the type described in the second paragraph of this article results in the consequences described in the third paragraph of the article, the perpetrator shall be liable to the penalty of imprisonment for a period of at least five years."

In Cyprus, Article 5 of Act No. 119 (1)2000, on the prevention of violence in the family and the protection of victims, defines rape or attempted rape of spouses as a crime (see criminal code, Articles 144-146). Article 154 of the criminal code sets out the penalties for forms of fraud in relation to marriage (see also Articles 178 and 180).

In the Czech Republic marital rape is not a specific offence. The absence of relevant legal provisions on violence means that there is total impunity for forced marriage.

In Finland criminal proceedings may be taken in cases of forced marriage on the basis of those sections of the criminal code concerned with sexual offences and, more specifically, rape, duress in sexual relations, duress in the sex act and sexual abuse. Penalties depend on the level of violence or threat involved, and also on whether the victim is a minor or in a situation of particular dependence on the perpetrator.

Under Article 222-23 of the French criminal code, "Any act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise, is rape" and "Rape is punishable by 15 years' criminal imprisonment." The definition includes digital penetration of the anus or vagina and acts of fellatio without consent. Forced marriage can be regarded as rape of a spouse. Proceedings for complicity may be taken against the parents of a minor. Rape is defined as a grave

offence ("crime") and the law rules out any defence of consent, whatever the age of the accused, if the victim is under 15. The victim's age is then an aggravating factor and the perpetrator is liable to up to 20 years' imprisonment. "The presumption that spouses consent to sex acts in the context of marital intimacy applies only in the absence of proof to the contrary" (judgment of the Court of Cassation, Criminal Chamber, of 11 June 1992).

In addition, France's Law No. 98-468 of 17 June 1998 extends the relevant limitation period in the case of under-age victims to 10 years after the victim reaches majority, whoever the aggressor. The law applies to offences on which action was not barred at 20 June 1998, the date it came into force.

Marriage of convenience is an offence under France's Law N° 2003-1119 of 26 November 2003. Under the new Section 21 *quater* (created by the 2003 Law) of the Order of 2 November 1945 on foreigners' entry into and residence in France (currently, Articles 621-1 to 621-3 of the Code of foreigners' entry into and residence in France and asylum right), chief county administrative officers ("*prefects*") can have the public prosecution service investigate if it is suspected that such a marriage has been contracted.

Under Hungarian law it is a crime to force someone to marry. Offences including threatening behaviour have been prosecuted under Article 174 on constraint ("A person who by means of violence constrains another person to do, refrain from doing or endure something, and thus occasions significant harm, shall be guilty of a crime – unless another crime is involved – and shall be punished by a term of imprisonment of up to three years"). There are a number of provisions in the criminal code in relation to violent offences committed against family members or children. They provide a basis for bringing criminal proceedings and for imposing various types of penalty available for sex offences and/or abuse of women or children. Since the criminal code was amended in 1997, Section 14 ("Crimes against the family, young people or sexual morality") has

included rape or sexual assault committed within marriage as criminal offences. Under Section XII ("Crimes against persons"), Title II ("Crimes against personal freedom and human dignity"), infringement of a person's liberty is also an offence (see Section 175).

New provisions in the Italian criminal code have replaced the concept of rape, as such, by that of "sexual violence", a generic term that covers all forms of sexual assault. It punishes false imprisonment and sexual violence, lays down aggravating circumstances, and makes sex acts with a minor a criminal offence. There is no specific provision on rape of a minor, or indeed on other specific sex acts against a minor. The victim's age is an aggravating circumstance rather than giving rise to a separate, specific offence. Similarly, the existence of a husband-wife relationship is not a factor constituting a particular offence. There is no separate offence of rape within marriage.

Under Article 242 of the Netherlands criminal code, prosecutions are possible in cases of forced marriage on the basis of criminal offences such as rape, indecent assault, false imprisonment, duress or threats and intimidation. The first step is for the victim or a third party to make a complaint. On 1 December 1991 a new rule came into force in relation to sex crimes against minors aged 12-16. Proceedings in such cases could be initiated only if a complaint had been made by the victim or the victim's parents. This provision having proved difficult to apply, the law was amended on 10 September 2002: the public prosecution service is now required to interview the victim in order to make sure that the offence was not committed with his or her consent. If there was consent, the proceedings may be discontinued at the prosecution service's discretion.

Article 184 of the Polish criminal code has an offence of violence within the family: "Anyone who inflicts physical or psychological ill treatment on a family member, a person temporarily or permanently in his or her charge, a minor or a vulnerable person shall be liable to a term of imprisonment of between six months and five years. The penalty



shall be increased to ten years if the perpetrator has, by his or her actions, put the victim's life at risk." Rape is punishable under Article 168 of the criminal code, which provides: "Anyone who uses force, threat or other unlawful means to constrain another person to engage in or submit to an immoral act shall be liable to a term of imprisonment of between one and ten years." Article 199 of the code makes it an offence to abuse a person's vulnerable position in order to involve them in sexual relations (the provision covers offences besides prostitution). The penalty here is imprisonment for up to three years.

In Portugal, forced marriage can be dealt with under the provision on crimes against sexual freedom: "Anyone who constrains another person to undergo or engage, with him or another person, in copulation or anal or oral coitus by means of violence or serious threat or by rendering the other person unconscious or unable to resist shall be liable to imprisonment for a period of between three and ten years" (Article 164(1) of the criminal code). "Anyone who abuses the authority conferred by a relationship of hierarchical, economic or work-related dependence to constrain another person, by means of an order or form of threat not specified in the preceding article, to undergo or engage, with him or another person, in copulation or anal or oral coitus shall be liable to imprisonment for a period of up to three years" (Article 164(2) of the criminal code). Where the victim is the perpetrator's spouse, Article 152 of the Portuguese criminal code¹⁶ lays down a penalty of imprisonment for between one and 10 years, depending on the gravity of the offence.

In Romania neither rape nor sexual cruelty between spouses constitutes a criminal offence. Nonetheless, Romanian law does provide for women who are victims of sexual cruelty within marriage to take the offender to court and claim damages with interest. Penalties for cruelty within marriage are governed in part by Act 61/1991 on contraventions in

marital, public-order and public-safety matters. Apart from Act 61, which deals specifically with violence between spouses, Romanian criminal law makes no distinction between the private and public spheres. The legislation on trespass to the person is applicable only to cruelty within marriage (Articles 180 and 181).

Section VI of the Slovakian criminal code contains specific provisions protecting children against various forms of assault and violence, notably under the heading "Criminal offences against the family and children". Further protection is provided to some extent by the provisions in Section V ("Criminal offences constituting serious violence in the context of civil coexistence") and Section VIII ("Criminal offences against freedom and human dignity"). Offences involving sexual violence are covered by Articles 242 and 243, while Article 217 deals with endangering the moral development of children and adolescents.

Since 1989, the Spanish criminal code¹⁷ has punished violence within marriage. Its provisions were reinforced by the Framework Act of 9 June 1999 on protection of victims of ill-treatment. Thus, any person who engages "habitually in acts of physical or psychological violence" against a spouse is liable to a prison sentence of between six months and three years. This penalty is additional to those imposed for any other offences, such as assault, which the acts of violence involved. The criminal code also lays down heavier penalties for striking a spouse without causing wounds. Heavier penalties apply too where threats are made with the use of weapons or dangerous objects and there is a tie between the aggressor and the victim.

In Sweden,¹⁸ a reform adopted in 1998 created the new offence of "violation of a woman's integrity", which is defined as the repeated commission of offences against life and liberty, or sexual offences, directed against a woman with whom the perpetrator has, or has had, an intimate relationship. Where the offence is committed by a spouse it is classed as

"gross violation of a woman's integrity". It is punishable by imprisonment for a period of between six months and six years, which may imposed additionally to other penalties, for example for assault.

In Turkey, under the new Criminal Code, adopted on 26 September 2004 and entered into force on 1 June 2005, sexual offences are dealt with under the Section on "Crimes against the person". The concepts of rape and indecent assault under duress have been replaced with the concepts of sexual assault and sexual exploitation of children. The offence of sexual assault and the circumstances of its commission have been well-defined. Aggravated circumstances exist where the offence involves penetration with an organ, an object, etc. In the event of a sexual offence with aggravating circumstances resulting in mental or physical harm to the victim, a more severe sentence applies. Where a victim who is in a coma following commission of the offence dies, the penalty incurred is life imprisonment. Under the new code rape between partners qualifies as a crime carrying severe penalties. This change in the law is intended to punish marital rape. Sexual exploitation of children is defined as an "offence against sexual integrity". An aggravated sentence is incurred where the offence is perpetrated by a descendant, an ascendant, a blood relation of the second or third degree, a step-father, an adoptive parent, a guardian and so on. The conditions of repentance that lead to suspension of trial proceedings or of a sentence have been well defined. There can be no suspension, reduction or remission of sentence where a person was kidnapped or held against their will and forced into marriage with the accused or convicted person. Perpetrators of honour crimes incur the maximum penalty for the offence committed. Family members or close relatives who kill a woman who has been the victim of a sexual assault on the ground of protecting the family's honour do not benefit from mitigating circumstances. Deliberately injuring a descendant or ascendant, a spouse, a brother or a sister constitutes an aggravated offence.

16. See "La lutte contre les violences conjugates", a working document of the French Senate (No. LC 86, March 2001).

17. *Ibid.*

18. *Ibid.*



In the United Kingdom, forced marriages are classed under “sexual offences”, the penalties for which are set out in the Sexual Offences Act 1956. There is, however, specific legislation on indecent assaults against children, the Indecency with Children Act 1960. In November 2003, Parliament adopted a new Sexual Offences Act.

The offence of rape depends in the UK on absence of the victim’s consent. The new Act creates an offence of assault by penetration other than with the penis, i.e. by any means including with objects. Perpetrators of this offence may be male or female. The law irrefragably presumes absence of consent on the part of children under 13. Other provisions on “sexual offences” set out penalties to be imposed on those who cause or incite a minor to engage in sexual activity with a third party or with themselves, even where the attempt fails. These provisions offer a possible basis on which to convict parents. It should be noted that acts of violence between partners do not constitute a specific offence. They are often classed as intimidation or as trespass to the person. Ordinary law is applicable in such cases but the courts, which enjoy a large measure of discretion, can take into account any ties between aggressor and victim in determining the sentence. The fact that violence has taken place between partners may thus lead the courts to impose heavier sentences. Marriage is regarded as a circumstance aggravating the offence. Violence within marriage may also come under the scope of 1997 legislation providing protection against harassment, which it defines in the following terms: “a person whose course of conduct causes another to fear on at least two occasions that violence will be used [...] against him is guilty of an offence”. Since the early 1990s the courts have handed down convictions for rape between partners, but there have been very few such cases. Some judges take account of length of marriage in such cases and may reduce the sentence accordingly. In October 1999, for example, the fact that a man who had raped his wife had been married for 17 years was deemed suf-

ficient ground for sentencing him to just two years’ imprisonment.

In other words, few countries have defined forced marriage as an offence in its own right. In most countries it is punishable via penalties for offences under ordinary law. The penalties for each offence have regard to circumstances which may be more or less aggravating, depending upon whether the victim was a minor, on whether the offence was committed against a family member, on the nature of the link between aggressor and victim and on the seriousness of the act committed (i.e. if it involved violence, threat, unlawful imprisonment, use of objects, etc.). All these provisions in criminal law provide a basis upon which to punish forced marriage – that is, once the marriage has been contracted. Rape within marriage is not yet recognised under all legal systems. Certain countries have introduced provisions that can be used to prosecute parents for abetting the rape of a minor.¹⁹ The next question to be asked concerns the bringing of criminal proceedings, and the rules here differ widely from country to country: in some cases initiation of proceedings depends on the victim making a complaint, in others the public prosecution service may take action unprompted. In some countries the public prosecution service cannot take any action unless the victim has made a complaint. The law may sometimes allow the prosecution service to initiate an investigation or even place a suspect in preventive detention to ensure that he or she does not abscond or material evidence go missing. There are systems where the public prosecution service has an automatic right to take action if it considers it to be in the public interest. In some countries it is not necessary for a victim to make a complaint for criminal proceedings to be instigated, and any member of the public can refer a matter to the justice authorities (although, as a rule, proceedings are initiated by the police). This is potentially very rele-

19. See the Evreux (France) Regional Court judgment of 7 May 2002 and the subsequent judgment by the Rouen Appeal Court of 20 July 2004 on an application for compensation made by the victim of an offence, *op. cit.*

vant to forced marriages as it enables relatives of a victim of forced marriage to sound the alert and have criminal action taken.

In practice, in most countries, very few cases are reported – victims are afraid to go to the police, or feel ashamed, or have little confidence in the authorities. The point is made in the information submitted from many countries that often, when victims do make a complaint, perpetrators receive only the minimum penalty, prison sentences being rare or relatively short.

It is worth noting that the Special Court for Sierra Leone has agreed to recognise a new offence of “forced marriage”, to be regarded as a crime against humanity. On the International Day for the Elimination of Violence against Women, 25 November 2004, at the United Nations, Secretary General Kofi Annan welcomed this step, making the point that in many cases sexual violence was compounded by the threat of potentially fatal HIV infection.²⁰

In Germany, another amendment is currently discussed by the Bundesrat. The Länder Chamber has passed draft legislation that should now be presented to the Bundestag (Bundesrat Printed Matter 546/05). According to this draft legislation, forced marriage, where the victim is coerced into marriage by force, the threat of appreciable harm, or the exploitation of a coercive situation in connection with a stay in a foreign country, is punished with imprisonment of up to 10 years. A new paragraph 234b including this provision shall be added to the criminal code. The civil code shall also be amended.

It is important to consider the determining characteristics of forced marriage in order to be able to define a new offence of that name. A broad approach is needed, to take in the different degrees of seriousness (violence, false imprisonment, threats, pressures, the use of objects, etc.) and differences of personal status (are the victims minors or adults, did the offence take place between family members, was the connection

20. Source: ATTAC-Genre, “Le mariage forcé, crime contre l’humanité”, 30 November 2004.



between perpetrator and victim is close or distant?). The penalties also need graduating according to the circumstances of individual cases. We have already made the point that forced marriage cannot be tackled successfully, or victims properly protected, by legal instruments alone. We need to supplement our study by looking at the way legal proceedings are conducted in a range of countries. Limitation periods need extending so

that all victims can get redress through the justice system, and a number of procedural measures need to be taken: persons other than the victim ought to be able to initiate proceedings; victims ought to get a hearing; and they should be given psychological support as well as protection (from reprisals, for example).

In conclusion, it should be clear that the subject of forced marriage cannot be approached solely from a

legal angle, particularly as it is a practice rooted in custom and tradition. The problem is not simply to determine what agreement or law should apply: it is also about how well the laws that are applied can be adapted to the specific circumstances of forced marriages. This is a complex question but it is directly relevant to all the policies that governments implement, and the programmes and measures they initiate.

Policies, programmes and initiatives to combat forced marriage

It is because forced marriages create very real problems that governments are impelled to make

policy choices for preventing or countering them. Not all countries, however, have relevant action plans with

specific measures for implementation at local, regional and national levels.

Forced marriage and personal protection policies

If measures under civil and criminal law are inadequate, then we must look to personal protection measures as a means of achieving more tangible results in preventing forced marriage. There are two international agreements¹ that require the signatory states to do their utmost to protect children.

United Nations Convention on the Rights of the Child, of 1989,²

which has been signed and ratified by many countries including Austria, Belgium, Bosnia and Herzegovina, Cyprus, Croatia, Denmark, Spain, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Norway, the Netherlands, Poland, Portugal, the Czech Republic, Romania, the United Kingdom, the Slovak Republic, Sweden, Switzerland and Turkey, as well as most of the countries of origin of the immigrant communities within the European Union (Algeria, Tunisia, Morocco, Côte d'Ivoire, Mali, Senegal, Mauritania, Cameroon, Pakistan and Vietnam) and has been signed, although not ratified, by Somalia. The Convention provides:

- “States Parties shall [...] *protect the child from all forms of physical or mental violence, injury or abuse [...] including sexual abuse*” (Article 19).
- “States Parties shall take all effective and appropriate measures with a view to *abolishing traditional practices prejudicial to the health of children*” (Article 24).

The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children,³ which entered into force on 1 January 2002, has been signed by a number of countries including Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Sweden, Switzerland and the United Kingdom and ratified by the Czech Republic, Estonia, Latvia, Lithuania, Monaco, Slovakia and Slovenia. Its provisions are designed to protect children in international situations, from birth to age 18. It provides:

- “The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction *to take measures directed to the protection of the child's person or property*” (Article 5 -1). Also:
- “In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction *to take any necessary measures of protection*” (Article 11 -1).

On this basis a number of countries have introduced legal measures providing for the courts to settle family conflicts or to intervene where parents fail in their duties and to take steps to protect anyone who fears or has undergone a forced marriage.

For example, relevant child welfare provisions have been introduced in Austria, Belgium, France, Germany, Hungary, Romania, Sweden and Switzerland.

If the health, safety or morality of a minor is at risk, or if the child's upbringing is seriously compromised, a court may – on application by the child's father and mother jointly, by one of them, by the person or service responsible for the child, or by a guardian, the minor in question or

1. Regarding these agreements, the study covers the 46 Council of Europe member states.
2. India and Congo have adopted the Convention.

3. Amending the Convention concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors (5 October 1961).



the public prosecution service – instruct that welfare measures be taken. Exceptionally, the court may act on its own initiative. It may instruct either a qualified person, a supervisory body or a non-residential education or rehabilitation agency to assist and advise the person or service responsible for the child, as well as the child's family, and to monitor the child's development. Such measures are known in the UK as care, supervision or protection orders. One step that may be taken in such situations is to remove the child from the family home. This is done in response to an application by the authorities if a child has suffered, or is at risk of, substantial harm. Emergency protection orders can be made in respect of any child believed to be at risk of substantial harm if the child is not transferred immediately to a place of safety. Where it is presumed that a marriage has taken place without the consent of a minor, the court may thus take the steps it deems necessary in the child's interest. In Germany, measures available in such situations range from injunctions, through guardianship and other court orders to complete or partial withdrawal of custody. The custody of a person may be withdrawn completely if other measures have failed or if they are deemed insufficient to eliminate a risk. In order to protect children from marriage effectively, it will often be necessary to remove parental rights and to separate the child from the family (at least temporarily). A judge in charge of the family protection may make an appropriate order without any formal application having been made to it, where it has been alerted, for instance, by friends, neighbours or a child protection agency. If urgent intervention is needed – for example, if a child is about to leave to be married – the court may issue injunctions to ensure the child's safety and protection. In Romania a government strategy for protecting children in difficulty was developed in the years 2001-2004. It sets out a consistent package of response measures in which the central role falls to the National Authority for the Protection of Children's Rights and for Adoption (ANPDCA), and creates an institu-

tional framework through which the ANPDCA can coordinate measures taken by ministries and other government agencies responsible for social and family protection and education, with key input from local administrative bodies and civil society. The ANPDCA, a dedicated central administrative body, monitors observance of the law in the field of child protection. Child protection services have the task of preparing annual, medium-term and long-term strategic plans to restructure and develop the system of protection for children in difficulty in their specific administrative areas. They also supervise implementation of the strategies, and coordinate, support and review the work of county administrative authorities in this field.

Protection orders in Turkey

Law No. 4320 on Family Protection aimed at preventing forced marriages and all forms of violence against women entered into force in 1998. It was the first time that a legal definition of "marital violence" was given. With the aim of combating domestic violence, this law permits victims to lodge complaints and obtain protection orders. Failure to comply with the law or with a protection measure can be reported to the public prosecutor. Under the law, criminal proceedings can be triggered without it being necessary for the victim to lodge a complaint. This possibility allows the police and the judiciary to take action in the event of a complaint by a third party, even where the victim has not complained.

In Austria, Germany, Italy and the UK, in cases of domestic violence, courts may make orders with regard to occupation of the family home, or barring aggressors from contact with their victims.

A victim may be given sole occupancy of the family home even in the absence of any legal right of ownership or tenancy. The court will take its decision on the basis of the circumstances in the case, and has a large measure of discretion in this regard: it may divide the accommodation, awarding sole occupancy of part of it to the victim, may require the aggressor to leave the premises, or

may bar the aggressor from the area in which the home is situated.

The court may also order the aggressor not to visit the victim at home, to stay away from places that the victim frequents and not to enter into contact with the victim. In the UK, if a victim is in real danger or is likely to discontinue proceedings against the aggressor, the court may make this type of order without giving the aggressor prior warning. In Austria, such orders are served by a bailiff but the police may be asked to intervene in the most serious cases.

In Italy there is a system of protection orders to prevent abuse within the family.

If the conduct of a spouse or cohabitee causes serious harm to the physical or moral integrity of the other spouse or cohabitee, the court may, in situations where the facts of the case do not automatically warrant initiation of criminal proceedings and on application by one of the parties, order that one or more of a series of measures be taken. Social services or a family mediation agency or similar recognised body, whose role is to protect victims of marital or domestic violence, may be instructed to intervene. The court may also make an order that the spouse in charge of the family be paid an allowance proportionate to any loss of income.

In principle, these protection measures are uncontroversial. They are based, in every country, on laws which have a twofold justification: both as rules for immediate application with the self-evident aim of protecting minors and the human person, and as the expression of international undertakings. Yet obstacles can potentially arise in their implementation, limiting their preventive effect with regard to forced marriages. This happens firstly because courts, in their dealings with families and particularly families of immigrant origin, may have difficulty understanding different types of family structure and approaches to dispute settlement within families. It happens secondly because people's relationship with the law differs from one society to another, and lastly because different societies place different interpretations on the concept of the child's interests. We thus need



to ask if there are, in fact, general principles applicable with respect to family rights. There is a dual problem here, involving both the compatibility of different legal systems and the cohabitation of different cultural systems. Accepting people from differ-

ent backgrounds and respecting their distinctive characteristics does not mean importing practices that compromise fundamental human rights. Nonetheless, legal opinions differ on this question and they can sometimes be used to justify practices which

would not, in fact, be permissible under the positive law of countries of origin, or which would be subject to restrictions. All this serves to emphasise just what an important role the law can play as a tool for integration.

Forced marriage and migration policies

In French case law over the last 100 years, applications for annulment of marriage on grounds of absence of consent – most of them made by wives and some by the public prosecution service – have often been based on the argument that marital intent was lacking and the marriage was contracted with a view to circumventing immigration laws.

Many of these marriages were, in all likelihood, “sham” or “bogus” marriages – marriages of convenience contracted with a view to one of the parties obtaining a residence permit or being granted a different nationality. Thus, under the heading of migration policy, several countries have introduced measures to combat them. Yet, we should not overlook the possibility that some such cases also involved forced marriage.

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification⁴ – the first European-level law in this field – lays down conditions for family reunification among third-country nationals and recommends a number of measures that states should take to prevent marriage under duress.

The directive provides for the sponsor's spouse and unmarried children aged under 18 to benefit from the family reunification procedure. By way of exception, where a child aged over 12 arrives independently from the rest of his or her family the member state may, before authorising entry and residence under the directive, verify whether he or she meets a condition for integration provided for by its legislation as at the date of implementing the directive.

The sponsor must have a residence permit issued by the authorities of a member state and valid for at least one year. When the application

for family reunification is submitted, the member state concerned may require evidence that the sponsor has accommodation regarded as normal for a comparable family in the same region, and which meets the general health and safety standards in force there; that the sponsor has sickness insurance, in respect of all risks normally covered for nationals of the member state concerned, for himself/herself and the members of his/her family; and that the sponsor has stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family without recourse to the social assistance system of the member state. Member states are required to evaluate these resources with reference to their nature and regularity and may take into account the level of the minimum national wage and pension as well as the number of family members. Member states may require third-country nationals to comply with integration measures in accordance with national law, and may apply the further condition that the sponsor should have resided lawfully on the territory for a period not exceeding two years before an application is made in respect of his/her family member.

The family reunification procedure – the main aim of which is to maintain family unity – is designed to enable third-country nationals to obtain residence permits authorising them to remain legally on the territory of the member state where the application is made. Member states may reject an application for entry and residence of family members, or may withdraw or refuse to renew a family member's residence permit, on grounds of public policy, public security or public health.

The directive thus imposes restrictions on family reunification in order to ensure better integration of foreign

nationals into the host country. It is also a tool for preventing forced marriages inasmuch as the member states may require that the sponsor and his or her spouse be of a minimum age, which cannot be set higher than age 21, before the spouse is able to join the sponsor.

Replies received from the countries studied indicate that Belgium, France, Germany, Spain, Denmark, Italy, the Netherlands, Portugal and the United Kingdom have introduced family reunification rules similar to those set out in European directive. These rules cover:

- the potential beneficiaries of the family reunification procedure – all the relevant pieces of legislation limit the procedure to spouses and unmarried minors and only exceptionally allow other members of the family (such as strong link) to benefit from it;
- the conditions that sponsors must meet (a residence permit being required);
- income and accommodation requirements designed to ensure that the non-national can personally meet his or her family's needs in a sustainable manner and provide the family with the best possible housing conditions;
- the length of validity of residence permits obtained under the family reunification procedure.

The point is explicitly made in working documents of the French Senate that⁵ family reunification is becoming particularly difficult, notably in Northern European countries.

- New provisions were introduced in German law on 1 January 2005. According to paragraph 32 of the Residence Act (Aufenthaltsgesetz), the minor children of foreigners

4. Official Journal of the European Union, 3 October 2003, L.251/12-L251/18.

5. “Le regroupement familial”, working documents of the French Senate, No. LC 112, September 2002.



who have a limited or an unlimited residence permit, have a right to a limited residence permit for the purpose of family reunification. Minor children of these foreigners who have completed their 16th year of life are to be granted a limited residence permit if they are fluent in German language and give guarantees that they can integrate themselves into living conditions in the Federal Republic of Germany (paragraph 32 sub-section 2 of the Residence Act).

- Under the Danish Act of 6 June 2002 family reunification is no longer recognised as a right, even for spouses and children. Moreover, family reunification for spouses is possible only when both spouses are aged over 24. The sponsor must, for a period of at least three years, have held a residence permit of unlimited duration, such a permit being obtainable only after seven years' residence in the country. Both spouses' aggregated ties with Denmark must be stronger than with any other country. However, the couple does not have to satisfy the condition of ties if the spouse living in Denmark has been a Danish national for 28 years or was born and raised in Denmark or came to Denmark as small child and was raised in Denmark and has resided in Denmark for 28 years.
- In the Netherlands, sponsors are required to be at least 21 years old. The procedure is also subject to rigorous financial requirements.

It is important to note, however, that in France, the rules on family reunification and proof of cohabitation for at least two years⁶ include a provision whereby a spouse who has come from a foreign country and, because of marital violence, cannot meet the cohabitation requirement

may have his or her residence permit renewed. In difficult situations such as this the authorities must consider all the explanations advanced by the person concerned. Chief county administrative officers ("préfets") will take into account – though each case must still be thoroughly scrutinised – any information supplied by associations that work with foreign nationals, particularly women. Decisions in this regard have immediate effect.

A number of countries including Belgium and France have also looked closely at the question of marriages of convenience, focusing on the requirement for marriage of a valid residence permit, and on the concept of marital intent on the part of the spouses.

Under the Belgian Marriages of Convenience Act of 4 May 1999⁷ registrars are responsible for drawing up a marriage declaration document and for notifying the public prosecution service in cases where there is doubt as to the spouses' consent and their intent to form a lasting union.

Some legal commentators have criticised the Act as an infringement of the freedom to marry. On the basis that law develops out of practice, Marie-Claire Foblets⁸ argues that if the registrar uses the provisions of the Act properly, it can be a means of preventing forced marriages. If not, it will merely be repressive. She notes, on the basis of a study of 250 court decisions, that some offices of the public prosecution service will act on the basis of a registrar's refusal to issue a declaration while others will not.

It should also be noted here that a Belgian Government circular of 17 December 1999, concerning the 4 May 1999 Act amending certain provisions in relation to marriage, drew attention to the importance of the fact that the right to marry is enshrined in Article 12 of the Euro-

pean Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 23 of the International Covenant on Civil and Political Rights. This right cannot therefore be made contingent upon the residency situation of the parties concerned, and consequently the registrar may not refuse to draw up a declaration or to celebrate a marriage for the sole reason that a foreign national is illegally resident in the Kingdom. Moreover, the suspicion that a marriage may be one of convenience does not justify a registrar in refusing to draw up a declaration of marriage, the purpose of the declaration being to confirm that the couple meet the formal requirements and that the necessary documents have been submitted. In such circumstances, however, the registrar may refuse to celebrate the marriage, or may postpone it.⁹ The would-be spouses then have the option of applying to a court for an order requiring the registrar to conduct the marriage. In practice, a summary application procedure is common in such cases but it is also possible to take proceedings on the substantive issue.¹⁰ In order to demonstrate absence of genuine intent to embark on married life, a body of evidence must be assembled which collectively constitutes grounds for legal suspicion and represents the basis of a case. Admissions and witness statements can also be used,¹¹ taking account of the particular circumstances of each case. Absence of a sexual relationship between the spouses may be taken into account but is not in itself absolute proof that a marriage is one of convenience.¹² Spouses are to be given the benefit of the doubt.¹³

On 13 July 2004 the Belgian Chamber of Representatives brought forward a draft resolution on combating marriages of convenience.¹⁴ It called on the Federal Government to support a new law aimed at penalising those who conclude marriages of con-

6. Under the Order of 2 November 1945 on the entry and residence of foreigners, amended by the so-called "Sarkozy Act", Law No. 2003-1119 of 26 November 2003 on control of immigration and residence of foreigners in France and nationality (Official Gazette No. 274, 27 November 2003), the period is extended to three years if the foreign spouse cannot supply proof that he or she lived continuously in France for at least a year following the marriage.

7. Act of 4 May 1999 on marriages of convenience, *Moniteur belge*, 1 July 1999.

8. Marie-Claire Foblets, "À la lumière du nouveau code de droit marocain et des directives européennes", contribution to a colloquy organised by Belgium's Ministry for the French Community, Equal Opportunities Department, Secretariat Research Office, and entitled "Mariage choisi, mariage subi, quels enjeux pour les jeunes", *op. cit.*

9. *Ibid.*, p. 34.

10. Centre pour l'égalité des chances et la lutte contre le racisme, *La famille dans ses dimensions juridiques internationales*, *op. cit.*, p. 34.

11. See Circular of 1 July 1994, *Moniteur belge* 7 July 1994, and Circular of 4 May 1999, *Moniteur belge* 1 July.



venience; creating a database about such marriages; enabling municipalities to tackle the practice effectively by laying down clear instructions and supplying municipal registry staff with relevant information; creating within district offices of the public prosecution service the post of legal support officer with responsibility for coordinating the work of different judicial districts and keeping them informed, and for ensuring that each office not only monitors the local authorities but also assists them as necessary; reviewing the system of residence permits, notably by extending the waiting period for definitive authorisation of residence in order to give the authorities more time to consider applications; setting up an official contact point where male and female victims of marriages of convenience can discuss their problems; and taking steps to put marriages of convenience on the agenda of the Council of Ministers of the European Union.

Similarly in France the Ministry of Internal Affairs, Internal Security and Local Freedoms sent a circular to chief county administrative officers as part of a drive to combat marriages of convenience.¹⁵ The circular details the approach to be taken in assessing whether spouses meet the requirement of cohabitation.

Under the law, foreign nationals married to a French national may thus be required to meet the cohabitation condition from the date of issue of the first temporary residence permit. Proof of continuing cohabitation may, in most cases, take the form of a sworn declaration signed by both spouses to the effect that they have not ceased to cohabit. In cases where cohabitation is in doubt (e.g. where a marriage took place some considerable time previously and the applicant has just recently entered the country or submitted the application, or where the marriage is contracted by a foreign national illegally present in the country), additional proof or even a police check may be required. The effect of such a step should not be to increase unnecessarily the burden of proof on those concerned, particularly where the applicant has entered France recently, immediately following a marriage celebrated abroad or shortly before a planned marriage in France, and the procedural requirements have been met.

When a temporary residence permit is renewed for the first time, and again when resident status is granted, chief county administrative officers are required to check that the cohabitation requirement is met. Cohabitation may be proved by submission of documentary evidence. Couples are also required to sign a sworn declaration. The cohabitation condition does not necessarily require the spouses to live under the same roof.¹⁶ Chief county administrative officers are required to look favourably on applications for renewal of residence permits by foreign nationals who have ceased to cohabit due to fear of marital violence on the part of a French spouse. In the case of a forced marriage this measure enables a woman who has been married under duress to free herself

from the union without losing her residence rights.

A stipulation has been added to Article 63 of the French Civil Code requiring registrars to conduct an interview with intending spouses before any marriage is celebrated in France. The purpose of the interview is to confirm, at a sufficiently early date before the marriage ceremony, that the couple's marital intent is genuine. The intending spouses may be interviewed separately or together. Where they are unable to attend such an interview, or where it is clear from documents submitted that their marital intent is not in doubt, the interview may be waived. The principle still holds that the registrar may have recourse to the public prosecution service in cases where there are serious grounds to suspect that marital intent is lacking. The fact that an intending spouse is in breach of the law on residence requirements is not an automatic reason for notifying the public prosecution service. Nonetheless the Constitutional Council has clearly taken the view that the fact of unlawful residence may, in conjunction with other aspects of a case, be regarded as an indicator of marriage of convenience. This means it is a factor that may be taken into account in decision-making at municipal level. Chief county administrative officers will support all relevant action taken in cases where marital intent is in question. Where a case is referred to the public prosecution service, it has 15 days in which either to permit the marriage to go ahead or to conduct a fuller investigation and therefore postpone the marriage. The prosecution service's interim decision and the reasons for it must be communicated to the registrar and the parties concerned, as must the final decision after investigation. The time allowed for the investigation is one month, with a possible extension of a further month.

Mixed [French and non-French] couples who marry outside France are required to present themselves at least once at the French embassy or consulate, where they may be interviewed together or separately: they may do so when they apply to have the marriage banns published, when the French national receives his or

12. Liège, 17 March 1992, J.L. M.B., 1992, 955.

Following their engagement, two Moroccans were married before a Belgian registrar and subsequently celebrated the event. The woman later applied for annulment of the marriage on the ground that it had been one of convenience. Her application was granted. The judgment was reversed on appeal, however, the Court of Appeal noting *inter alia* that the spouses had intended to furnish an apartment in which to live and not to hold their marriage celebration until the following year, in accordance with Moroccan custom; that the woman had said she recognised there was a considerable difference in character between herself and her spouse; that the wife's family had envisaged her obtaining a divorce by mutual consent but that the husband had not been prepared to divorce; and that the spouses had admitted they had never had sexual relations. On the basis of these circumstances, the court took the view that at the time of the marriage the couple had indeed intended to cohabit and that it was not therefore a marriage of convenience.

13. Centre pour l'égalité des chances et la lutte contre le racisme, *La famille dans ses dimensions juridiques internationales*, op. cit., p. 34.

14. Draft resolution on combating marriages of convenience, tabled by the Belgian Chamber of Representatives on 13 July 2004, Doc 51 1283/001.

15. Circular NOR/INT/D/04/00006/C, of 20 January 2004, from the French Ministry of Internal Affairs, Internal Security and Local Freedoms to Chief County Administrative Officers ["*préfets*"] in Metropolitan France and the Overseas Departments and Territories.

16. Article 108 of the French Civil Code.



her certificate of marital capacity (not the marriage certificate), or when the marriage is entered on the civil registrar.

Collectively these measures – which take effect either before a marriage is celebrated or when it is officially registered – are designed to prevent or combat forced marriage.

Another important factor in any consideration of forced marriage is the question of how French nationality is acquired. The fact that a spouse automatically acquires nationality on marriage may encourage some parents to choose for their child a marriage partner who lives in a European country and has dual nationality – that of the country of origin and that of the host country – and to insist on the marriage.

In France and Portugal, a foreigner who marries a national can obtain nationality via a straightforward declaration procedure: one year after the marriage in France, or three years after it in Portugal. France has placed restrictions on acquisition of nationality: if the couple has ceased to cohabit, if the foreign national has been sentenced for a criminal offence or has received an expulsion order, or if he or she has insufficient command of the French language.

In Germany and Italy the law recognises naturalisation of foreign spouses. In Germany certain conditions are attached for the applicant and his/her family (paragraph 8, subsection 1 No. 4 of StAG): lost of the original nationality (paragraph 8, subsection 1 No. 1 of StAG), respect of German way of life as well as a three-year length of stay and two years of

marriage. Under Italian law, applicants for naturalisation must have been lawfully resident in the country for at least six months or must have been married for three years. The only grounds for refusal are if an applicant has been convicted of a criminal offence or is believed to represent a security risk to the Republic.

In Denmark, the Netherlands, Spain and the United Kingdom, spouses have to follow the naturalisation procedure under ordinary law but the periods of residence required are shorter: whereas the normal requirement in Denmark is residence for nine years, the spouse of a Danish national will be eligible for naturalisation after six years depending on the duration of the marriage. In Spain the length of residence required is reduced from 10 years to one year, and in the UK from five to three years. In the Netherlands the residence requirement does not apply to spouses of Netherlands nationals provided they have been married for at least three years. And whereas people who acquire Netherlands nationality through the ordinary naturalisation procedure lose their original nationality, spouses of a Netherlands national are allowed to retain dual nationality.

It is clear from a comparative study of the legislation of the different countries that there have been fresh developments in the legislation on foreign nationals. Belgium and France have taken specific measures to combat marriages of convenience, and French law contains a number of provisions directed against forced marriage. It seems clear that neither

extending stipulated periods of proven cohabitation nor giving courts the power to decide if a cohabitation requirement has been met is likely to counter the problem of marriages of convenience effectively. Given that marriage, for some people, is essentially a means of changing their nationality, it might seem sufficient, for preventing marriages of convenience, to break the connection between what is a voluntary step under family law and what is an integration-orientated measure. To do so, however, would contravene the European Convention on Human Rights and disregard the question of immigration and integration. Is it possible, therefore, to use this area of the law to prevent marriages under duress? The answer is not straightforward. Measures taken by governments to combat sham marriages must not result in excessive suspicion being directed at marriages involving foreigners, and particularly mixed marriages. Nor, however, should it be forgotten that this form of fraud can conceal a forced marriage. As well as individual cases of marriage fraud, there are organised networks that will set up marriages of convenience for foreigners unlawfully resident in European countries who are prepared to pay large sums of money – the “wives” being purchased or forced into the union. It is to be hoped that the new requirement in France that registrars should interview intending spouses before a marriage in order to verify marital intent will have some effect in combating both marriages of convenience and forced marriages.

Approaches to combating forced marriage

All the countries studied have facilities for the victims of forced marriages, including advice centres, shelters and law centres. In addition, measures have been taken among ethnic communities: so-called “integration contracts”, action in the community, in schools and through clubs and associations, police initiatives, training courses, information supply,

audiovisual projects, research programmes. Some countries have provided specific funding, introduced support measures and set up telephone help lines. More rarely, efforts have been directed at those responsible for forced marriages. In all these activities a networked approach emerges as the most appropriate for

helping people who have been forced into marriage.

Before looking at some of the schemes and activities, it is important to note that the types of information received from the different countries vary widely, making detailed analysis impossible. What follows is therefore simply a summary of initiatives in a number of countries.



Types of provision

Advice centres

People who refuse to be married by force need to have their own identities acknowledged, they need to be supported in their bid for freedom, and they need to be listened to with sympathy. For these reasons some countries have set up advice centres where people in such situations can go to tell their stories, can help to reinforce one another's confidence and can reach and implement their own decisions. In Germany there is the Papatya Association and in France the Mouvement Français pour le Planning Familial (MFPF) [French Family Planning Movement]. Advice centres, which victims of forced marriage can visit repeatedly in making their decision, play an essential role. It is vital for victims to be able to talk about their wishes and doubts, and about the suffering they experience as a result of being denied freedom at the most intimate, personal level.

Shelters

Homes run by associations for women who have been ill-treated in Portugal, shelters for battered women in the Netherlands, shelters for victims of physical violence or sexual or physical assaults in Turkey, public authority accommodation in the UK, reception centres run by the voluntary sector in Croatia, accommodation services for women and children who are victims of violence in Malta, shelters run by women volunteers in Norway, shelters for both men and women in Sweden, homes and hostels in France – all of these are places where the victims of forced marriage can find refuge and accommodation. What they need is somewhere to stay on a temporary basis in a safe environment, where they can go in an emergency. Obviously the types of provision listed were not developed in response to the specific problem of forced marriage: they accept people

who find themselves in crisis situations due to a whole range of problems.

A more specifically targeted initiative is that of the Papatya Association in Germany, funded by the Youth and Sport Department of the Federal State of Berlin, which works to prevent violence against girls. Birim Bayam Tekeli reports: "Around 30% of the girls who come to the association are under threat of forced marriage. The sale of fiancés is one aspect of this type of violence. At its most extreme, it can take the form of honour killings or genital mutilation. The association's aim is to provide protection, refuge and advice to girls who want to escape from family violence, and we have an eight-place refuge apartment for them in Berlin. The address is secret so that the girls will not be pursued by their families. Contact has to be made through the SOS Youth service, and the association will then call the girl. There is an initial interview to assess the seriousness of the threat and determine whether the girl needs shelter. If the association agrees to take her in, the girl must respect the ground-rules in the refuge. The girls receive support from German, Turkish and Kurdish social workers who have been specially trained. When they are admitted they are given assistance to plan either for a return to the family or for living apart from them. The guidance offered will depend on the individual girl's history, wishes and capabilities. The girls are encouraged to talk to their families, either at a meeting in a youth social worker's office or by telephone or letter. The aim is to help them formulate and defend their own ideas and plans for the future. At meetings with families, the parents are often adamant that their daughters must return home. If a girl is too fearful of such a meeting it will not take place. Only 10% of parents

accept a daughter's decision to live elsewhere. In many cases the association will resort to the courts".¹⁷

Constant efforts are made in Turkey to increase the number of shelters. There are currently thirteen shelters managed by the Directorate of Social Affairs and Child Protection at the Prime Minister's Office and eleven managed by various private-sector bodies. In addition, Law No. 5257 on local government has helped to increase the number of reception facilities, since it requires all municipal authorities to come to the assistance of women and child victims of violence. Municipalities with more than 50,000 inhabitants are obliged to open protection centres. These municipal measures will help to improve the quality of the protection and support provided to victims.

For the period 2003–2007, the Government of Sweden has set aside SEK 180 million for sheltered housing and other measures for young people at risk of violence in the name of honour. In 2003, SEK 20 million were allocated, the bulk of which went to the county administrative boards in Stockholm County, Västra Götaland County and Skåne County to set up sheltered housing. In 2004 the county administrative boards in the three metropolitan counties have received SEK 7.5 million each for continued measures for sheltered housing and other purposes.

"Maisons de justice"

In Belgium and France "Maisons de justice" [law centres], run by the regional courts, can provide legal information to victims of forced marriage and help them to apply to the courts for an annulment.

17. Birim Bayam Tekeli, "L'Association Papatya et l'accueil des jeunes filles à Berlin", in *Hommes et Migrations - Femmes contre la violence*, op. cit., p. 110.

Other initiatives

Work with ethnic communities

In the UK, the Community Liaison Unit attached to the Foreign and Commonwealth Office handles some 200 cases a year.

In Sweden, in 2003, acting on Government instructions, the Commission for State Grants to Religious Communities engaged in more in-depth dialogue with religious communities on issues relating to

women's and children's rights. The commission submitted two progress reports and, on 31 December 2003, a final report. In July 2005, the commission was granted SEK 300,000 for continued dialogue with religious



communities on society's fundamental values.

Belgium has victim support services which can offer emotional and psychological assistance to victims of forced marriage. Victim support falls within the remit of the Community ministries responsible for social welfare.

In France, the Ministry for Social Affairs and the Department for Parity and Equality in the Workplace have approached the question of forced marriages in the context of the "integration contracts" which applicants for residence permits are asked to sign.¹⁸ The aim here is to prevent community-based narrow-mindedness by encouraging vulnerable groups of people, particularly women in certain communities, to commit themselves to a process of integration.

Social welfare initiatives

In 2000 Norway introduced an action programme to tackle the problem of domestic violence. A further programme with a similar aim was initiated in 2004 and more recently an action programme was launched to prevent forced marriages.

In Sweden the National Youth Affairs Office has received financial support from the Swedish Heritage Fund to fund projects to help girls.

Action in schools

In some countries, schools are assuming a role in efforts to prevent forced marriages. In France,¹⁹ at a colloquy organised by the Ministry of

Education on 7 March 2002 and entitled "Equality, mixed society and secularism: from the general aim of emancipation through education to combating forced marriages and promoting equal rights", the almost 200 participants discussed what general provision was relevant to prevention of forced marriages and asked whether specific responses were required. The issue was thus seen as an integral part of the education system's general mission and basic principles. Schools in fact have a duty, under a ministerial instruction on the subject, to report suspected cases of sexual violence.²⁰

In Sweden, measures have been taken by the National Agency for Improvement of Schools and the National Centres for Education in Values. The Government has funded the production of relevant educational resources and initiatives to highlight the situation of vulnerable girls and boys in families where the notion of honour is centrally important. A report was published entitled "Stronger than you think: how schools support girls and relate to families" (available only in Swedish).

Action by voluntary associations

Associations also play a key role in preventing forced marriages and helping people who have been the victims of such unions.

In France in 2001 the Voix de Femmes [Women's Voice] association handled 145 such cases. France Terre d'Asile [France: Country of Asylum] is involved in efforts to prevent and combat violence against refugee women. A number of other associations, including Elele, Voix de Femmes, Voix d'Elles-Rebelles and the GAMs, work at grassroots level by providing advice in schools. The Fatoumata Association for Women's Emancipation (AFEf) offers one-to-one support and advice, organises awareness-raising conferences and

works in partnership with other bodies.

Associations also play an important role in the UK. Anti-Slavery International, founded in 1839, lobbies countries where slavery still exists to bring forward measures to end it (and it defines forced marriage as a form of slavery). It promotes research and works with local organisations to raise awareness of the problem. Other associations working in the field are Southall Black Sisters, a group that defends single women's rights and handles some 200 cases annually, and Reunite, which works to combat forced marriage.

In Belgium several associations have specialised in working with victims of forced marriage: Istappen.be supports the victims of both forced marriages and marriages of convenience, while Payoke, a reception centre, is concerned with the victims of human trafficking and arranged marriages. In Antwerp the municipality has set up a unit to combat marriages of convenience and the "Meldpunt gedwongen huwelijk" offers support and advice about the steps to take in cases of forced marriage.

In Norway, some organisations supported by public funds can assist persons facing problems relating to forced marriages and assist those in difficult situation.

Action by the police

In many countries the police have a role to play in the fight against forced marriages.

In Austria the police have immediate powers, where a victim's health or freedom is at risk, to bar the perpetrator of the violence from the victim's home (the "Article 38a procedure"). Such banning orders have to be confirmed by a higher authority within 48 hours. The police will check, within three days, whether the perpetrator of the violence has complied. If not, a fine may be imposed, and repeated breach of a ban can lead to imprisonment. This type of banning order applies for only 10 days, but it may be extended for a further 10 days if the victim applies to a civil court for a protection order. When the police use their powers under Article 38a they have a duty to notify the victim

18. Circular NOR/INT/D/04/00006/C, of 20 January 2004, from the French Ministry of the Interior, Internal Security and Local Freedoms to Chief County Administrative Officers ["*préfets*"] in Metropolitan France and the Overseas Departments and Territories states that residence permits are to be issued on condition, in all cases, that integration is achieved under Article 6 of the relevant order. The aim is to assess the nature of the foreign national's intention in applying for residence by asking him or her to engage in a process of social and occupational integration in France, involving learning the language, becoming familiar with and observing the main principles of the French Republic, placing his or her children in school, undertaking vocational training and becoming involved in the life of the local community. The mayor of the municipality in which the foreign national lives may be consulted on this last point. Applicants for residence permits can be asked to sign an "integration contract".

19. See Marie Lazaridis, project leader, Ministry for Youth, National Education and Research, "Les filles à l'école: de l'égalité des chances à la prévention des mariages forcés", in *Hommes et Migrations - Femmes contre la violence*, op. cit.

20. Circular 97-175 of 26 August 1997 to chief education officers, heads of county education services and school principals.



of his or her means of recourse in civil law.

The UK Home Office encourages all initiatives, private or public, that are designed to combat marital violence. In January 2001, the Home Office Immigration Service funded a project to crack down on forced marriage, as a result of which 240 cases were resolved and 60 girls who had been held in the country against their will were repatriated. Police forces have a key role to play in the practical application of official guidelines and they have set up their own specialist units to which victims of marital violence can turn for help. Women are entitled to request that they be dealt with by a female police officer.

The police in Belgium can assist victims of forced marriage by giving them addresses of law centres or victim support services.

In Norway in 2002, police forces introduced the district-level post of coordinator of action against domestic violence, the aim being to reinforce police efforts at prevention in this area.

In January 1999 the Portuguese Council of Ministers adopted the known as INOVAR programme, run by the Ministry of Internal Affairs, in which a unit with a staff of five was given the task of working to improve relations between victims and the police. Its task is to raise awareness within the police of violence-related issues, to help set up a database on the problem, encourage modernisation of police stations and inform the wider public about violence. Larger police stations have units that specialise in domestic-violence cases.

Financial support

Persons who have suffered marital violence in the UK are no longer ineligible for the financial support payable to the victims of crimes of violence generally. Victims will receive financial support only where the perpetrator of the violence has been prosecuted and the victim has ceased to live permanently with the perpetrator. The support takes the form of a one-off payment, the amount of which is determined according to an official scale. It may be paid to cover exceptional expenses (such as the cost of work in the home). If a victim

has to stop work for more than 28 weeks as the result of an attack, compensation for loss of earnings may be payable from the 29th week.

In Germany, under the law on compensation for victims (Opferentschädigungsgezet, OEG), victims of intentional violence may, on request, be awarded financial compensation for all damages of a pecuniary nature or to their health. Among other things, this financial compensation covers pecuniary losses suffered and the cost of preventive and other medical treatment. It is available to German or European nationals and to foreigners who have lived lawfully in Germany for three years. Visitors and tourists (having been in the country for less than six months) receive financial compensation in the event of serious damage. Payment does not depend on conviction of the perpetrator of the damage in the criminal courts.

In Spain, if an act of marital violence constitutes an offence and incapacitates the victim for more than six months, and the victim receives no compensation or payment from either a private insurance fund or the social security system, state aid may be payable under a national solidarity scheme. Entitlement depends on a final court decision in the criminal case, and the maximum level of any award is fixed with reference to the national minimum monthly wage: it will be double that amount while the victim is incapacitated, subject to a six-month waiting period; and between 40 and 130 times the same amount, depending on the degree of incapacity, in cases where the incapacity is permanent. The sum is then adjusted to take account of personal circumstances (e.g., the victim's financial position and whether there are any dependents). Applications are processed by the Wages and Pensions Directorate of the Ministry of the Economy and Finance. If the ministry turns an application down, the victim may appeal to an independent ad hoc commission set up under the relevant act of parliament of 1995. The legislation provides for provisional aid to be granted pending a court verdict if the victim's financial situation is precarious – a concept defined by Government decree in

1997. The state may, at a later date, require that any money awarded be paid back if the court finds that no offence was committed and the victim receives compensation for damage suffered. The state is also empowered to recover amounts paid, by a civil-law subrogation action against the party responsible.

In Portugal, Executive Order 423/91 of 30 October 1991 provides for victims of violent crime to receive financial support from the state. Victims of marital violence are among the categories covered. If, as the result of an assault, the victim is unable to work for at least 30 days, has suffered a significant reduction in living standards and has not obtained compensation through the courts, there is an entitlement to state support. The amount payable covers only material injury. It is fixed with reference to the amounts payable to victims of road accidents and must take account of any other sources of income that the victim may have. Applications are made to the Ministry of Justice, which has an ad hoc committee to consider them. Act 129 of 20 August 1999 provides for a system of provisional aid to the victims of offences under Article 152 of the criminal code, specifically victims of marital violence, if as a result of the offence they are placed in financial difficulty. Applications for provisional aid may be made by the victim in person, by a women's aid association or by the public prosecution service. The state may require that any sum awarded, provisionally or otherwise, be paid back if the victim obtains compensation. To recover amounts paid the state is also empowered to take subrogation action against the party responsible.

Other forms of assistance

In Spain, Act 35/1995 of 11 December 1995 concerning violent crimes, crimes against sexual freedom, and aid and assistance to victims, applies in particular to victims of marital violence. Chapter I of the Act was given effect by Royal Decree 738/1997 of 23 May 1997. However, no implementing legislation has yet been introduced in respect of Chapter II ("Assistance to victims"). The 1995 Act places on the public authorities



investigating the case a duty to inform the presumed victim that they have the possibility of applying for state aid. Public prosecution services were reminded of this duty in Circular 2/1998 of 27 October 1998, issued by the Head of Public Prosecutions. The Act also requires the Ministry of Justice to set up victim-assistance offices at all courts where they are needed. Circular 1/1998, issued by the Head of Public Prosecutions, recommends that each prosecution service set up a domestic-violence unit with specially trained staff.

In Norway, victims of sexual or domestic violence can apply for free legal aid. The rule covers women who suffer sexual violence perpetrated by their husbands.

Telephone help lines

In the UK, Germany and Austria, there are 24-hour telephone help lines for people in difficulty.

In France, under anti-discrimination legislation passed on 16 November 2001, telephone help lines for victims of racial discrimination were set up in each département. In cooperation with the courts and bodies already working to combat discrimination, a victim support scheme was also set up at département level. People who have been forced into marriage can report their problems through this system. The anti-discrimination services observe the rule of professional confidentiality.

In Norway, an important measure to combat forced marriage is the Telephone Information service. The Ministry of Children and Family Affairs has organised a national telephone advice service. The service started in April 2000. The helpline has to main target groups: those who are in crisis because they are exposed to forced marriage, and those who need to know how to help young people in crisis because of forced marriage. The number of calls from young people in crisis increased over the last three years. One explanation is that now young ones know where to go for help and that they have experienced that they are helped.

In Sweden, too, "Terraferm", a support network for immigrant women, received funding for an emergency telephone service in 20 languages to

support and assist girls and women at risk from "honour"-related crimes of violence.

In Turkey, there is a telephone hotline (ALO 183), which operates during working hours, which women and children, in particular victims of violence and sexual exploitation, can call for advice on legal procedures, psychological counselling and public-awareness measures.

Work with aggressors

In Norway, attention has also been directed at the perpetrators of such crimes.

In Germany, where there are well developed support systems, the federal government wishes to see additional help measures for aggressors.

In Sweden the National Organisation of Occupational Crisis Centres for Men has received funding to develop means of assisting male immigrants with violent tendencies. Over a period of years, various projects have been carried out under the aegis of the national prison service with a view to developing methods of preventing recidivism.

Training and information initiatives

In Austria, on the initiative of the Minister for Health and Women, six Ministries are closely collaborating to draw up measures to prevent harmful practices, especially forced marriages and female genital mutilation. These include information campaigns targeted to teachers, as well as legal amendments where necessary. During the Austrian EU Presidency, "Harmful traditional practices" will be a topical issue (Conference of the Ministers for Gender Equality, Brussels, 25 January 2006).

In the UK, general practitioners working in the National Health Service have received training to help them identify signs of domestic violence.

In Croatia, public prosecutors and magistrates have received training about European law on domestic violence.

In Germany, in an initiative to raise awareness within police forces, the federal authorities have organised training courses and rationalised the police approach to forced marriages.

In the Netherlands, training courses are run by associations that are active on the issue.

The French département of Seine-Saint-Denis has run a special training course, "Preventing the practice of forced marriage: an initial training course for social services staff who work with schoolchildren". Designed by the county council, the education service and the Délégation aux Droits de la Femme et à l'Égalité [Women's Rights and Equality Committee] of the Ile-de-France Region, the course programme was published in 2002 under the title "Forced marriages – cultural aspects and legal remedies".

A project on prevention of forced marriages was undertaken, with the help of the school social assistant, by advanced health and social care students at Eugène Delacroix vocational high school in Drancy, Seine-Saint-Denis, which is officially classed as a "sensitive area". The project was assisted by the association GAMS and included a showing of the film *Forced Marriage*, followed by a discussion between GAMS members and the 150 students taking part.²¹

In Norway, training courses are available for professionals who work with the police and health services, with a view to helping them deal more effectively with both the perpetrators of violence and their victims.

In Sweden, the government organised a series of seminars for representatives of the public authorities, religious denominations, women's shelters, organisations that work with immigrants and other NGOs, as well as experts in the field. The focus was on how the public authorities and NGOs might cooperate to improve matters for girls and their families.

In France, provisions entitling victims to information from police officers and to legal assistance were included in the Framework Justice Act passed on 9 September 2002 (the "Perben Act"). Under Section VIII of the Act, "Provisions on Aid to Victims", victims have an actual right to be informed (see Articles 63 and 64).

21. See Caroline Durand, "Prévention des mariages forcés: que retiennent les lycéen(ne)s des actions de prévention sur les pratiques des mariages forcés conduites au sein d'établissements scolaires?", post-graduate dissertation, op. cit.



Police officers are required to use all means at their disposal to inform victims of their rights with regard to applying for compensation and taking civil action. If a prosecution is under way or a case has been referred for criminal investigation the victim must be notified of the legal-representation and protection arrangements available, of the option of receiving help from a local authority service or an accredited victim-support association and of the possibility of applying to the Criminal Injuries Compensation Committee (CIVI). Under Article 65 of the Act the victim's entitlement to legal aid is no longer subject to means-testing.

In Norway a National Centre for Information and Research into Violence and Post-traumatic Stress has been set up. It carries out research and disseminates information and the findings of its studies.

In Sweden, the National Office for Health and Wellbeing, acting on the government's instructions, has produced and distributed an information booklet about girls exposed to threat and duress. The booklet is for social services staff and is available on the Internet.

Audiovisual initiatives

In the UK, a video designed to raise awareness of the problem of forced marriages in the 12-18 age group was produced in March 2002.

In France, a film entitled *Forced Marriage* was produced using an extract from a play written and acted by girls taking the health and social care course at Sabatier vocational high school in Bobigny. The film includes interviews with people working in the field. Since 1998 the film has been used on training courses for both school students and social workers.

Research

In the UK, the Home Office monitors the phenomenon of forced marriages and published a report on the situation in 2000. It also explores solutions to the problem: the report recommends that forced marriage should no longer be dealt with as a family issue but rather as a breach of the law. It should be reported to the police, and parents could then be

charged with kidnapping, domestic violence or child abuse.

In Latvia the Anti-Violence Centre at Dardedze has conducted a research project on marriage, having children, and factors that promote good parent-child relationships.

In Sweden, on government instructions, the Association of Local Authorities in Stockholm made a study of relationships between individuals and their families. The starting point for the research was the crucial role played by the family in the transmission of a culture, and its influence on the individual's ability to cope with the values and demands of a new country. March 2003 saw the publication of a report entitled "Working with patriarchal families – a survey of activities", intended for use by social services, in schools and nursery schools, and by relevant public authorities and NGOs. It might be found on the association's website.

The government, in co-operation with the Swedish Integration Board, the National Institute of Public Health, the National Board of Health and Welfare, the National Agency for Education, the National Board for Youth Affairs and the Office of the Children's Ombudsman, has highlighted good examples and methods for preventing conflicts between the individual and the family that may be caused by ideas about honour.

- "Instructive examples – preventing individual-family conflicts" (Report 2002:14);
- "Fruitful examples are there to make use of..." (stencil series 2002:8), an evaluation of eight projects designed to promote gender equality and prevent conflict that were carried out with support from the Board in 1999–2000;
- "The 2002 Integration Report" The report includes a special chapter on conditions affecting the childhood and adolescence of children and young people from foreign backgrounds. A report on this assignment was delivered in March 2003 (in Swedish only);
- "The way in. Voices on integration and gender equality", which gives specific examples of preventive action, and "Patriarchal enclaves or no-man's-land? Violence, threats and restraints towards young women in

Sweden". These reports were published in 2003.

The National Institute of Public Health has been commissioned by the Government to collect, analyse and disseminate information about how to organise different forms of support for parents in order to achieve concrete results. The Institute had to submit its report to the Government no later than 31 December 2004.

Since 1994 Sweden has had a National Centre for Battered and Raped Women. Converted into a national institute; its role will be to develop methods for care and treatment and to serve government agencies, organisations and the general public as a knowledge and research centre on men's violence against women, sexual abuse and rape. The prospects of establishing a national emergency telephone line for women that are victims of men's violence are considered. A report on this work had to be submitted no later than 30 November 2004.

Finally, the Swedish National Board of Health and Welfare has been commissioned by the Government to monitor the establishment of sheltered housing and investigate the possibility of setting up a national system of advisory support for the social services and others. The Board had to report on its work by 31 March 2005.

The concept of a summary of policies, schemes and initiatives suggesting action in one specific direction is, at this stage, no more than that – an idea or ambition. It is not a reality. The fact is that, through the combined effects of demographic, economic, historical, political and social variables, each country has developed its own particular characteristics – hence the range of approaches described. Investigating forced marriage involves questioning the whole mythic edifice of opposition and complementarity between the sexes, as well as the basic concepts of family and society and different perceptions of them. Preventing and combating forced marriage is nonetheless essential. It is likely that solutions lie both in universally applicable institutions and in more specialised projects. What this study has shown is that action proposals are not enough. Resources must also be made available for assessing the effectiveness of any action taken.

Proposed recommendations

The study suggests that action is needed on a number of fronts:

Information, awareness raising, education and training

- Women and children should be better informed about their rights with regard to preventing and opposing forced marriages.
- Information projects need to be developed for both girls and boys at school.
- There is a need for awareness-raising among public prosecutors, diplomatic and consular staff, magistrates, police officers and social workers in relation to forced marriages and the legal, cultural and family problems that women encounter.
- Training programmes about women's civil rights need to be developed for those who work in the community.

Legal reforms to prevent and combat forced marriages

- Treaties that ignore the constitutional principle of male-female equality should be denounced.
- Where there is a choice of law, preference should be given to the law of the normal place of residence so as to avoid making women from immigrant backgrounds subject to discrimination with regard to personal status.
- Governments should be encouraged to amend their legislation to make 18 the minimum marriage age.
- A recommendation should be made to governments to include in their criminal-law provisions a specific offence of forced marriage, with penalties reflecting aggravating circumstances.
- Limitation periods for the commencement of civil and criminal proceedings should be reviewed.

Policies and initiatives to help those involved in forced-marriage situations

- Contact points need to be developed where people can report their experiences and receive assistance, support and advice.
- Women's rights associations should be supported.
- Inter-association networks need financial support.
- Specific initiatives for women need developing as part of municipal policy-making and policies for integration.
- The gender dimension should be incorporated in policy-making on ordinary law.
- Action programmes need to be developed targeting those responsible for forced marriages.
- Resources are required to assess the effectiveness of the proposed policies and initiatives.

Resources for research into the reality of forced marriages

- A working party should be set up to conduct a European-level study of forced marriages.
 - to raise awareness of the problems experienced by victims of forced marriage and their families;
 - to examine legal practices, the policies and approaches that have been introduced, and the roles of those involved in forced-marriage situations.
- The aims would be:

Some references

France

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Appendix 1:

List of countries studied and correspondents

The table below lists the countries covered by the research, with the names of the respective correspondents and an indication of the replies received.

Of all the Council of Europe member states contacted, only 18

sent documented replies. Through other research, however, it was possible to gather information on a total of 28 countries.

The types of document submitted ranged widely and included international legal instruments in relation to

personal status, laws on marriage, filiation and divorce, and relevant criminal law. Some countries also supplied statistics or research findings of relevance, if only very partially, to forced marriage.

Country concerned	Correspondents	Replied
Albania	L. Ruci	No
Andorra	S. Gabarre M. Monllor Jimenez	No
Armenia	K. Hakobyan	No
Austria	B. Gisinger-Schindler B. Stimmer	No
Azerbaijan	M. Omarova	No
Belgium	A. Adriaenssens M. Franken M. Voets G. Pungu	Yes Yes No No
Bosnia and Herzegovina	S. Filipovic-Hadziabdic S. Krunic	No
Bulgaria	A. Ivanov	No
Croatia	H. Stimic Radin K. Ivankovic Knezevic	No No
Cyprus	D. Raptopoulos M. Varnavidou	Yes Yes
Czech Republic	J. Krukova	No
Denmark	T. Lund Pedersen	No
Estonia,	A. Hüvanen	Yes
Finland	M. Mestiri P. Kiviaho	Yes No
France	E. Rude-Antoine	Yes
Georgia	M. Botchorishvili	No
Germany	I. Bangert and G. Wölk	Yes

Country concerned	Correspondents	Replied
Greece	I. Katsaridou	No
Hungary	L. Feher	Yes
Iceland	no address	No
Ireland	D. Kilgallon M. Murphy	No Yes
Italy	V. Ferrari D. Bordone C. Collarile	Yes Yes No
Latvia	G. Rupenheite A. Gaile	Yes No
Liechtenstein	B. Kubik-Risch	No
Lithuania	V. Jurseniene	No, reply pending
Luxembourg	M. Mathekowitsch I. Klein I. Schroeder	Yes Yes No
Malta	S. Bugeja	Yes
Moldova	L. Pogrebniaia	No
Netherlands	I. Steinert N. Tellegen D. Belserang S. Aydogan F. Van Houwelingen	Yes Yes Yes Yes Yes
Norway	S. Salomon	No
Poland	L. Goldberg	No
Portugal	I. Romao A. Carvalho J. Vasconcelos	No Yes Yes
Romania	D. Semenescu	No
Russian Federation	T. Smirnova	No
San Marino	no address	No
Serbia and Montenegro	J. Stankoviæ-Tatarac	No
Slovak Republic	Z. Vranova	No
Slovenia	V. Neubauer	No
Spain	C. Payno De Orive	Yes
Sweden	E. Lotta Johansson M. Silvell T. Malm E. Fritz	Yes Yes Yes
Switzerland	C. Devanthery C. Müller	Yes Yes
“The former Yugoslav Republic of Macedonia”	E. Grozdanova	No
Turkey	G. Petek Salom M. Kaya K. Esener S. Durmus I. Atak	Yes Yes Yes No No
Ukraine	T. Izhevskia	No
United Kingdom	G. Russel	No

Appendix 2: Working documents

A comparison of laws and policies for tackling forced marriage

By **Edwige Rude-Antoine**, Research Officer, CNRS/CERSES
with the participation for some countries of **Danièle Siroux**,
Research Systems Officer, CNRS/CERSES

What follows is a summary of relevant legislation in 28 countries: Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

This appendix, intended as a reference tool, is based on documents submitted (mostly in English and from only a few countries) by the following people:

A. Adriaenssens and M. Franken for Belgium	I. Steinert, N. Tellegen, D. Belserang, S. Aydogan and F. Van Houwelingen for the Netherlands
D. Raptopoulos for Cyprus	A. Carvalho and J. Vasconcelos for Portugal
A. Hüvanen for Estonia	C. Payno de Orive for Spain
M. Mestiri for Finland	E. Lotta Johansson and M. Silvell for Sweden
I. Bangert and G. Wölk for Germany	C. Devanthéry and C. Müller for Switzerland
L. Feher for Hungary	G. Petek Salom and M. Kaya for Turkey
M. Murphy for Ireland	It has been compiled with a view to providing additional information and is not exhaustive.
V. Ferrari and D. Bordone for Italy (translation supplied by F. Giraud, Technical Research Officer, CNRS)	
G. Rupenheite for Latvia	
M. Mathekowitsch, via I. Klein for Luxembourg	
S. Bugeja for Malta	

Austria

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters. Austria adopted the convention on 1 October 1969.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 31 March 1982 and has been ratified.
- The 1989 United Nations Convention on the Rights of the Child was signed on 6 August 1992 and has been ratified.



2. Provisions in private international law

3. Provisions in civil law

4. Protection measures

The Protection against Family Violence Act of 30 December 1996, which came into force on 1 May 1997 and was amended in 1999, introduced new provisions to the Civil Code and the Code of Civil Procedure enabling courts to issue protection orders in response to applications by victims of physical violence.

By means of such an order the civil court can require an aggressor to quit the marital home, even if it is he who owns it. The court can also bar perpetrators of violence from specific places or buildings (a victim's workplace, for example) and instruct them to have no contact with their victims.

Such orders may not be made for periods of more than three months.

Orders are served by bailiffs but the police may be asked to intervene in the most serious cases.

The same Act introduced amendments to the Police Act. Because it is not possible to obtain a court order immediately after an act of violence has been committed, the police are legally empowered, where a victim's health or liberty is in danger, to bar the perpetrator from the victim's home with immediate effect (Article 38a). Barring orders cover not only the home itself but also its immediate surroundings, and they may be extended if necessary to a wider area including, for example, places frequented by the victim. When an order is issued by the police it must

be confirmed by a higher authority within 48 hours. The police may confiscate all the perpetrator's keys to the marital home. They will check within three days that the person subject to the barring order has complied with its terms. If he has not done so he will be liable to a fine, and repeated breaches of an order may result in imprisonment. A barring order is valid for only 10 days but will be extended automatically by a further 10 days if the victim applies to the civil court for a protection order. When the police take action under Article 38a they have a duty to inform the victim of the remedies available under the Code of Civil Procedure.

5. Provisions in criminal law

5.1. Classification of forced marriage

Forced marriage is not an offence in its own right.

Rape within marriage has, however, been a punishable offence since 1989. Under Article 203 of the Criminal Code, any person who rapes his spouse is liable to prosecution.

5.2. Prosecutions in cases of forced marriage

As a general rule, any member of the public who has sufficient grounds

for suspecting that the law has been broken can report the presumed perpetrator of the offence to the police. In the case of rape within marriage, a prosecution can be initiated only if the victim makes a complaint, unless the rape has resulted in serious injuries.

When a victim avails herself of protection under the Police Act and the police have ascertained that an offence has taken place, they are required to report it to the public prosecution service.

Under what is known as "redirection", a procedure introduced on 1 January 2000, the public prosecution service may drop a prosecution if, after a probationary period of between one and two years, it no longer seems appropriate. During the probationary period the perpetrator of the violence will undergo therapy.

6. Provisions of the law on foreign nationals

7. Policies and approaches

The police are required to give victims of violence an information document setting out the rights and duties of all parties concerned, and also to notify the local "intervention office" which will provide free legal assistance.

There is currently an intervention office in each of the nine Austrian federal states. Jointly funded by the Ministry for Family Affairs and the

Ministry of the Interior, these offices have the task of ensuring that measures to deal with perpetrators of domestic violence are properly observed.

In December 1998, the Ministry for Family Affairs set up a 24-hour telephone help line.

On the initiative of the Minister for Health and Women, six Ministries are currently closely collaborating to

draw up measures to prevent harmful practices, especially forced marriages and female genital mutilation. These include information campaigns targeted to teachers, as well as legal amendments where necessary. During the Austrian EU Presidency, "Harmful traditional practices" will be a topical issue (Conference of the Ministers for Gender Equality, Brussels, 25 January 2006).



Belgium

1. International agreements

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 10 July 1985 and has been ratified.
- The 1989 United Nations Convention on the Rights of the Child was signed on 16 December 1991 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of

Parental Responsibility and Measures for the Protection of Children, which entered into force on 1st January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

The Code of Private International Law (Implementation) Act [*Loi portant le Code de droit international privé*] of 16 July 2004,¹ while containing no specific provisions on forced marriage, nonetheless has an impact on the problem. It lays down the responsibilities of the Belgian authorities, determines the national legislation to be applied and sets out the conditions on which a ruling by a foreign court, or an instrument executed by a notary or public authority in a foreign country, may be given effect in Belgium.

The Act states: "Except where this Act provides otherwise, Belgian courts shall be competent to hear any application concerning a person's status and capacity in cases other than those covered by the general provisions of this Act if:

1) the person is habitually resident in Belgium when the application is made or

2) the person is of Belgian nationality when the application is made." (Article 32).

"Belgian courts shall be competent to hear any application concerning marriage or its effects [...], in cases other than those covered by the general provisions of the Act if:

1) in the case of a joint application one of the spouses is habitually resident in Belgium when the application is made;

2) the spouses' last shared habitual place of residence before the application was in Belgium;

3) the spouse making the application has been habitually resident in

Belgium for at least twelve months at the time of the application; or

4) the spouses are of Belgian nationality when the application is made." (Article 42)

"The marriage may be celebrated in Belgium if one of the future spouses is of Belgian nationality, is domiciled in Belgium or has been habitually resident in Belgium for more than three months at the time of its celebration." (Article 44)

The right to marry is not dependent on the residence status of the parties concerned, which means that the civil authority cannot refuse to draw up marriage documents or to celebrate the marriage solely on the ground that a foreign national is illegally resident in the Kingdom.

The marriage promise is subject:

1) "to the law of the state on whose territory each of the future spouses is habitually resident at the time when the promise is made;

2) if the spouses are not habitually resident on the territory of the same state, to the law of the state of which the two spouses are nationals at the time when the promise is made;

3) in other cases, to Belgian law". (Article 45).

The substantive conditions for marriage are governed by Article 46 and the formal conditions by Article 47.

"Except as otherwise provided in Article 47, the requirements for validity of the marriage shall be, for each of the spouses, as laid down in the law of the state of which he or she is a national when the marriage is celebrated." (Article 46)

"The formalities concerning the celebration of the marriage shall be as laid down in the law of the state on whose territory it is celebrated.

That law shall determine, in particular, whether and in what form:

1) declarations and public notices prior to the marriage are required in that state;

2) the marriage contract is to be drawn up and transcribed in that state;

3) marriage celebrated in the presence of a religious authority has legal effect;

4) marriage may take place by proxy." (Article 47)

In accordance with the circular issued on 23 September 2004 on aspects of the Code of Private International Law (Implementation) Act of 16 July 2004 concerning personal status,² the Act came into force on 1 October 2004. The circular states that "habitual residence" means the place where a physical person is principally resident even in the absence of any registration and irrespective of permission in respect of temporary or permanent residence, and that, in determining habitual residence, particular account is to be taken of personal or professional circumstances offering evidence of sustainable ties with the place in question, or the intention of forming such ties.

This concept of "habitual residence" is based on a definition set out by the Council of Europe in Resolution (72) 1 of 18 January 1972 on the standardisation of the legal concepts of "domicile" and "residence".

The Belgian Code uses this criterion in Articles 44 (on Belgian authorities' competence to celebrate a marriage) and 46 (on the law applicable to constitution of a marriage). In all other cases it must be determined

1. Act on Code of Private International Law, 16 July 2004, S. 57344, *Moniteur belge*, 27 July 2004, 174th year.

2. *Moniteur belge*, 28 September 2004, 174th year, p. 69594.



whether the person is habitually resident in a given state, and it can then be decided which country's law is applicable or if the Belgian courts and Belgian civil authorities have international jurisdiction.

According to the September 2004 circular, the purpose of Article 44 of the Code of Private International Law (Implementation) Act is twofold. It clearly fixes the conditions on which Belgian authorities have international jurisdiction, and – by laying down a requirement of at least three months' habitual residence – it aims to counter “marriage tourism”, particularly in cases that come under Article 46(2), on marriage between persons of the same sex.

Persons who claim they are habitually resident will thus be required to prove it by whatever legally recognised evidence. In cases of doubt the decision will rest with the civil authority. Article 44 states that the competent civil authority is the one responsible for the person's habitual place of residence within the meaning of Article 63 of the Civil Code.

The same circular points out that Article 46 of the Code of Private International Law (Implementation) Act merely restates the principle traditionally applied in Belgium (“The conditions of validity of the marriage shall be subject, for each spouse, to the law of the state of which he or she is a national when the marriage is celebrated”).

Article 47 lays down that the traditional rule is to apply whereby the formalities of the marriage are subject to the law of the state on whose territory it is celebrated.

With regard to marital capacity, the Belgian Equal Opportunities and Anti-Racism Centre states in its booklet “The family: its international legal dimensions”³ that it is possible for a foreign national to marry in Belgium at an age below that of marital capacity under Belgian law if his/her own national law specifies a marriageable age under 18 years. There is, however, a consensus among civil authorities that “child marriages” should be

ruled out – although there is no clear-cut definition of such marriages.

Many countries will recognise a marriage concluded in the presence of a Belgian civil authority even where one of their own nationals is involved. The partners in such cases are thus married in the eyes of both Belgian law and that of the foreign state.

There are, however, a number of states – mainly Islamic countries – that do not recognise marriage concluded before a Belgian civil authority, even if all the other requirements of their own law were met when the marriage was celebrated. Not all Islamic countries fall into this category.

One of the countries that will not recognise civil marriage concluded in Belgium is Morocco. If a Moroccan decides to marry in the presence of a Belgian civil authority, he or she must also be married a second time either at the consulate or in Morocco for the marriage to be valid there. It should be noted that an agreement exists between Morocco and Belgium concerning mutual recognition of civil marriage in the two countries and the procedure to be followed in such cases. The agreement has not, however, been ratified and nor has it been published in the *Moniteur belge* [official gazette]. It is merely observed in practice.

In principle, intending spouses who are both of Moroccan nationality thus have a choice. They can be married in the presence of a Belgian civil authority and their marriage will thus be valid only under Belgian law – although they have the option of concluding a subsequent second marriage either at the Moroccan consulate in Belgium or in Morocco. They can, however, go direct to the consulate without the registry marriage. In either case their marriage will be recognised in both Belgium and Morocco unless it is in breach of public policy, for example on polygamy.

When only one of the spouses has Moroccan nationality, the Belgian civil authority is competent to celebrate the marriage in accordance with Belgian law. The spouses may subsequently go to the consulate for a second ceremony. Alternatively, they may contract the marriage in

Morocco. Such a marriage will be recognised under both Belgian and Moroccan law provided that the provisions of Belgian law with regard to marriages contracted abroad have been observed.

Recognition in Belgium of marriages concluded abroad and involving young people depends on whether the young person concerned has both Belgian nationality and the nationality of a country that permits marriage under the age of 18 years. Only a youth court can authorise Belgians to marry under the age of 18.⁴

A decision duly delivered by a foreign court has effect in Belgium, irrespective of any enforcement authorisation, except where it is used to press a property claim or exert coercion.

Recognition of instruments drawn up by notaries or public authorities in foreign countries is subject to Article 27 (“Such an instrument shall be recognised by all authorities in Belgium without recourse to any procedure if its validity is established in the manner required by the law applicable under this Act, particular account being taken of the provisions of Articles 18 and 21 concerning, respectively, fraudulent evasion of the law, and public policy”). This provision covers many types of instrument that are presented to civil authorities (including marriage certificates and recognitory acts).

A number of conditions have to be met in order for such an act to be recognised:

- Its validity must be established as required by the law applicable under the Act – thus entailing application of the choice-of-law rules set out in the Code of Private International Law;

3. Centre pour l'égalité des chances et la lutte contre le racisme, *La famille dans ses dimensions juridiques internationales*, booklet (as of January 2003), 110 pp.

4. Brussels, 12 July 1992, *Revue de droit européen*, 1992, 315, note: A young woman of Belgian and Moroccan nationality, under the age of 18, married a Moroccan in Morocco. The marriage was not recognised in Belgium. The woman then attempted to conclude a second marriage in Belgium with the same man. Because she was of Belgian nationality it was necessary for her to obtain an exemption from the official ban on marriage under 18. Proceedings were therefore initiated to that end, the woman arguing that if the exemption was refused she would have to accompany her husband to Morocco and would lose the benefit of studies she had begun in Belgium. She was granted the exemption.



- The Act stipulates that particular account must be taken in this connection of Articles 18 and 21;
- The instrument must meet the conditions of authenticity laid down in the law under which it was drawn up;

- Article 24 (specifying the documentary evidence required for recognition of a foreign judgment) applies. In the case of official or notarial instruments, an official copy is normally required. It is subject to the same conditions of

legal authentication as apply to official copies of foreign judgments.

Anyone wishing to contest a civil authority's refusal to recognise an official instrument may appeal to the regional court.

3. Provisions in civil law

The Belgian Equal Opportunities and Anti-Racism Centre booklet "The family: its international legal dimensions"⁵ describes the formal and substantive requirements for marriage, as summarised below.

3.1. Marital capacity

Under Article 388 of the Belgian Civil Code, a person is a minor until he or she reaches the age of 18 years. The age of majority was reduced from 21 to 18 by an Act passed on 19 January 1990.

"In order to marry in Belgium one must have reached the age of 18 years (Article 144 of the Belgian Civil Code). If a Belgian wishes to marry before the age of 18, he [or she] must follow a special procedure in the youth court. The minimum age requirement may be reduced if there are 'serious reasons' for doing so. In principle, future spouses aged under 18 cannot contract marriage without the consent of their father and mother, which has to be recorded by the youth court. If parents refuse to give their consent, the court may nonetheless authorise the marriage if it considers the refusal to be unreasonable. The terms 'serious reasons' and 'unreasonable refusal' are merely general concepts. It is the court's task to assess the particular circumstances of each case."⁶ The court may authorise the marriage of a minor if both parents fail to appear or if neither is capable of indicating a view.

3.2. Consent

Article 146 stipulates that there cannot be any marriage without consent. The theory of vitiated consent is accepted with regard to marriage, albeit more restrictively than with other types of contract.

3.3. Celebration of marriage

The principle for the celebration of marriage is that the parties should appear in person, publicly, before the civil authority in the presence of two witnesses. If the civil authority finds that the conditions for marriage have not been met, he or she may, if it is suspected that there is an impediment to the marriage, postpone the ceremony for two months in order to carry out an inquiry and refer the findings to the public prosecution service; if it is certain that there is an impediment to the marriage, the civil authority may refuse to celebrate it. The civil authority may not draw up the marriage certificate until the exchange of consent has been recorded.

In order for a Belgian civil authority to celebrate a marriage, at least one of the future spouses must have his or her place of residence or abode in the municipality of that civil authority. If the future spouses live in two different municipalities, they may choose in which they wish to marry. Certain formalities must be completed before the marriage is celebrated: in particular, a declaration of marriage must be made in the place of residence or abode of one of the two future spouses. Under Article 165(1) of the Civil Code the marriage may not be celebrated less than 14 days after the declaration is drawn up. The interval gives the civil authority time to assemble necessary information. The marriage must take place within six months from expiry of the 14-day interval.

3.4. Annulment of marriage

Consistent case law – which is the subject of legal commentary – has established the principle that a marriage contracted by a person who lacks marital capacity is void (Article 502 of the Belgian Civil Code).

Mental impairment is a ground for annulment of marriage. It is judgments in the rare cases where one partner was mentally ill at the time of contracting the marriage that established the theory of non-existence of marriage – a union contracted by a person of unsound mind is not a marriage even in appearance.

Violence is another ground for annulment. Deferential fear of one's father and mother is not in itself regarded as justifying annulment.

Proven simulation has been established in case law as a ground of absolute nullity of the apparent marriage. For simulation to be recognised, it must be the case that the parties jointly feigned the exchange of consent without in any way intending it to have effect.

Certain persons are entitled to object to the celebration of a marriage, namely an existing spouse of one of the intending marriage partners, the father or mother or, in their absence, the grandfather or grandmother of either partner or, should they have no relatives in the ascending line, their brothers or sisters, uncles, aunts or adult first cousins, the sole grounds for such an objection being an intending spouse's mental illness or mental disability. A guardian – provided he or she is acting with the authorisation of the family council – is also entitled to object.

If an objection is raised the civil authority cannot celebrate the marriage until the objection has been set aside by the regional court. It is up to the intending spouses to apply to the court for that purpose.

If a marriage is celebrated notwithstanding the opposition of a person entitled to object to it, it will not necessarily be void. The deciding factor is the reason for the objection.

Annulment is obtained by means of legal proceedings. An action for annulment is in principle indefeasible.

5. Centre pour l'égalité des chances et la lutte contre le racisme, *La famille dans ses dimensions juridiques internationales*, brochure (as of 1 January 2003), 110 pp.

6. *Ibid.*, p. 30.



ble. Proceedings are initiated through an application by one of the two spouses or by the public prosecution service. It is then necessary to prove that the requirements for marriage were not met when the marriage was concluded (Article 180 of the Civil Code). Marriages of convenience are liable to annulment. The court decision granting annulment is a declaratory ruling.

The court may, however, rule, on an application from one or both of the spouses, that the marriage was “putative”.

In order to obtain such a ruling, “the person concerned must show that he or she acted in good faith, in other words with the intention of leading a genuine married life and in the belief that the marriage was concluded lawfully. A spouse (or spouses) who acted in good faith will retain those rights acquired through

marriage with regard to Belgian nationality and permission to reside in the country. He or she will also retain inheritance rights as a surviving spouse and will be entitled to survivor's pension if the annulment is pronounced after the death of the other spouse. In cases of putative marriage, entitlement to support and to the sharing of household expenses is also retained, although only up to the date of the annulment.”⁷

“The law does not require that there should be love between the future spouses and their cohabitation need not necessarily be based on love. There is, in principle, no legal argument against a marriage based on expediency or one in which it is presumed that love will develop later. It has been established in both theory and case law that the intention of

improving one's situation with regard to residency may very well constitute a reason for wishing to get married, provided that it is not the sole motivation.”

“Obviously the determining factor here is the initial intent to cohabit. Should it turn out that the partners are incompatible and that the marriage has not been consummated, that in itself is not sufficient reason for annulment. If the two partners were initially motivated by sound intentions but, because of particular circumstances, their relationship has degenerated to crisis point, an action for annulment is not the most suitable means of ending the marriage. In such cases, if dissolution of the marriage is desired, it should be achieved through divorce proceedings.”⁸

7. *Ibid.*, p. 47.

8. *Ibid.*, p. 34.

4. Protection measures

Under Article 371(2) of the Belgian Civil Code, “the father and mother shall have authority to protect the child's safety, health and morality. In this regard they shall have rights of custody, supervision and care”. Article 371(3) adds: “The child may not leave the family home without the father's and mother's permission and may not be taken from it except in cases of necessity as determined by law.” “No renunciation or transfer of parental authority shall have effect unless it is pursuant to a court ruling [...]” (Article 376). If, despite these provisions, parents planned to remove a minor from the family home, they would be liable to have their custody of the child, or indeed their parental authority, partly or entirely withdrawn. (See Article 378 of the Civil Code with regard to cases of criminal conviction and Article 378(1) with regard to other cases).

Child welfare measures may be used as a means of preventing forced marriages. Thus, under Article 375 of the Civil Code: “If the health, safety or morality of a minor [...] is at risk or if the conditions of his [or her] upbringing and education are seriously compromised, a court may – on application by the child's father and mother jointly, by one of them, by the person or service responsible for the child, or by a guardian, the child himself [or herself], or the public prosecution service – instruct that welfare measures should be taken. The court may, exceptionally, act on its own initiative.”

In addition, Article 375(3) reads: “If it is necessary to remove the child from his or her current surroundings, the court may decide to place him or her with the parent who was not previously exercising parental authority or with whom the child was not habitually resident, with another family

member or with a trustworthy third party, a general or specialised health or education service or establishment, or the county child-welfare service.”

In such cases, under Article 375(4): “The court may instruct either a qualified person, or a supervisory agency or non-residential education or rehabilitation agency to assist and advise the person or service entrusted with the care of the child, as well as the child's family, and to monitor the child's development.”

Where parental authority is withdrawn from a child's parents, Article 380 of the Civil Code requires the court to appoint a third person who will take temporary responsibility for the child (and who may then apply for guardianship) or place the child with the county child-welfare service.”

5. Provisions in criminal law

5.1. Classification of forced marriage

Forced marriage is not recognised as a specific offence in Belgium.

5.2. Prosecutions in cases of forced marriage



6. Provisions of the law on foreign nationals

Provisions on marriage by foreigners are included in the Foreign Nationals (Residence) Act (*Loi sur le séjour des étrangers*) of 15 December 1980, which secures the principle of family reunification on condition that spouses are married and cohabiting. An issue had arisen as to the length of the cohabitation period of which municipal authorities might require proof, and the Act laid down a period of one year and three months. To be granted family reunification, both partners must also be aged over 18 years, with the possibility of exemption for humanitarian reasons.

With regard to unlawful residence, certain authorities may require that a partner return to his or her country of origin in order to obtain a visa. That can be expensive, and a decision of 25 July 2002 found against Belgium in this connection. As a result a government circular of 17 December 1999 concerning the Act of 4 May 1999 amended certain provisions in relation to marriage (see below).

Under Article 19, persons returning to their country of origin are required to renew their residence permits. This enables anyone who fears being held against their will to signal the risk of being kept in the country of origin for longer than intended.

The Marriages of Convenience Act [*Loi sur les mariages de complaisance*] of 4 May 1999⁹ makes civil authorities responsible for drawing up a marriage declaration and notifying the public prosecution service in cases of doubt as to the spouses' consent or the purpose of the marriage (that is, as to intention of forming a lasting union). A court ruling may then be sought if the civil authority refuses to conduct the marriage.

Marie-Claire Foblets¹⁰ points out that this legislation has been criticised as a violation of freedom to marry. Arguing that law develops out

of practice, she contends that if the civil authority uses the provisions of the Act properly, it can be a means of preventing forced marriages. If not, it will merely be repressive. On the basis of a study of 250 court rulings it is clear that some offices of the public prosecution service will act on the basis of a civil authority's refusal to issue a declaration, while others will not.

The circular of 17 December 1999 concerning the Act of 4 May 1999, amending certain provisions in relation to marriage, emphasises that the right to marry is enshrined in Article 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (approved by an Act of Parliament of 13 May 1955, see *Moniteur belge* of 19 August 1955) and in Article 23 of the International Covenant on Civil and Political Rights. "This right cannot be made contingent upon the residence situation of the parties concerned, and consequently the civil authority may not refuse to draw up a declaration or to celebrate a marriage for the sole reason that a foreign national is illegally resident in the Kingdom."

Proving that a marriage is one of convenience depends on the following steps.

- "If a civil authority refuses to celebrate a marriage on the ground that it is one of convenience, the intending spouses may apply to a court for an order requiring the civil authority to celebrate [it]. In practice, a summary application procedure is common in such cases but it is also possible to have a full trial of the issues."¹¹
- "The suspicion that a marriage may be one of convenience does

not justify a civil authority in refusing to draw up a declaration of marriage, the purpose of the declaration being to confirm that the couple meet the formal requirements and that the necessary documents have been submitted. In such circumstances, however, the civil authority may refuse to celebrate the marriage, or may postpone it."¹²

- "It must be demonstrated to the court that when the marriage was concluded there was no genuine intent to embark on married life. To support that contention a body of evidence must be assembled which, taken together, gives grounds for legal suspicion and amounts to a *prima facie* case. Admissions and witness statements can also be used,¹³ taking account of the particular practical circumstances of each case. Absence of a sexual relationship between the spouses may be taken into account but is not in itself proof positive.¹⁴ The spouses must be given the benefit of any doubt."¹⁵

The Belgian position is based on the European Directive of 22 September 2003 on the right to family reunification.

On 13 July 2004 the Belgian Chamber of Representatives brought forward a draft resolution (Doc 51 1283/001) on combating marriages of convenience. It called on the federal government to support a new law aimed at penalising those who conclude marriages of convenience; creating a database about such marriages; enabling municipalities to tackle the

9. *Mariages de complaisance*, Act of 4 May 1999, *Moniteur belge*, 1 July 1999.

10. See M-C. Foblets "À la lumière du nouveau code de droit marocain et des directives européennes", contribution to a colloquy organised by the Belgian Ministry of the French Community, Equal Opportunities Department, General Secretariat Research Office, and entitled "Mariage choisi, mariage subi, quels enjeux pour les jeunes", Brussels, 21 January 2005.

11. Centre pour l'égalité des chances et la lutte contre le racisme, *La famille dans ses dimensions juridiques internationales*, brochure (as of 1 January 2003), p. 34.

12. *Ibid.*, p. 34.

13. See Instruction of 1 July 1994, *Moniteur belge*, 7 July 1994, and Instruction of 4 May 1999, *Moniteur belge*, 1 July 1999.



14. Liège, 17 March 1992, J.L. Moniteur belge, 1992, 955. After engagement, two Moroccans were married before a Belgian registrar and subsequently celebrated the event. The woman later applied to the regional court for annulment of the marriage on the ground that it had been one of convenience. Her application was granted. The judgment was reversed on appeal, however, the Court of Appeal noting *inter alia* that the spouses had intended to furnish an apartment in which to live and not to hold their marriage celebration until the following year, according to Moroccan custom; that the woman had said she recognised there was a considerable difference in character between herself and her spouse; that the wife's family had envisaged her obtaining a divorce by mutual consent but that the husband had not been prepared to divorce; and that the spouses had admitted they had never had sexual relations. On the basis of these circumstances, the court took the view that at the time of the marriage the couple had indeed intended to cohabit and that it was not therefore a marriage of convenience.

practice effectively by laying down clear instructions and supplying municipal registry staff with relevant information; creating within district offices of the Public Prosecution Service the post of legal support officer with responsibility for coordinating the work of different judicial districts and keeping them informed, and for ensuring that each office not only monitors the local administrative authorities but also assists them as necessary; reviewing the system of residence permits, notably by extending the waiting period for definitive authorisation of residence in order to give the authorities more time to con-

sider applications; setting up an official contact point where male and female victims of marriages of convenience can discuss their problems; and taking the initiative to put marriages of convenience on the agenda of the Council of Ministers of the European Union.

15. Centre pour l'égalité des chances et la lutte contre le racisme, *La famille dans ses dimensions juridiques internationales*, brochure (as of 1 January 2003), p. 34.

7. Policies and approaches

The Brussels-based "Child Focus" organisation is a European centre for missing and sexually exploited children. It has been constituted since 31 March 1998 as a private agency officially recognised as serving the public interest. Its task is to provide active support at both national and international levels for inquiries into the disappearance, kidnapping or sexual exploitation of children, and to perform a preventive role.

Several organisations have specialised in working with victims of forced marriage.

- "Istappen.be", represented by Riet Van Gool, supports victims of both forced marriages and marriages of convenience;
- The Equal Opportunities and Antiracism Centre, whose contact person for questions of personal status is Fatima Hanine,¹⁶ is a federal government agency established by a law of 13 February 1993. It was originally set up primarily in order to combat racial discrimination (based on ethnic origin, nationality, skin colour, etc.). Since a law of 25 February 2003 its field of action has been extended to non-racial discrimination (on grounds of sexual orientation, religious beliefs, disability,

etc.).

As part of its activities the centre is concerned with the social and legal circumstances of women of immigrant or foreign origin. It gives opinions on situations of forced marriage to the relevant bodies and advises young women on preventive and/or reparatory measures.

- The Gender Equality Institute¹⁷ (established by a law of 16 December 2002) is authorised to:
 - assist, within the limits of its objective, anyone seeking advice on their rights and obligations. This assistance allows beneficiaries to obtain information and counselling on means of asserting their rights (Article 4, paragraph 5);
 - take legal action in lawsuits that may arise under criminal and other laws with the specific aim of guaranteeing gender equality (Article 4, paragraph 6). This institute accordingly deals with cases of forced marriage.
- "La Voix des Femmes"¹⁸ is a recognised further training association, having non-profit status, which pursues a range of activities:

reception and welfare services; teaching of literacy skills and French as a foreign language; a "school of duties"; activities aimed at women and girls and measures to raise public awareness of women's issues. The association targets all women, but particularly those from immigrant backgrounds.

It runs activities to prevent and combat forced marriage:

- counselling and follow-up services for persons with marital problems;
 - legal training in the *Mudawana*, or family code;
 - distribution of publications on marriage in schools and voluntary sector associations;
- The association is recognised as being authoritative in matters of marriage.
- The GAMS (Groupement d'hommes et de femmes pour l'Abolition des Mutilations Sexuelles féminines) (Movement of men and women for the Abolition of Female Genital Mutilation)¹⁹ is an association of African and European men and women competent in the fields of health, welfare, education, communication and languages, with a long track record in the sphere of prevention. Apart

16. fatima.hanine@cntr.be, rue Royale 138, 1000 Brussels, tel.: 02/212.30.00, fax: 02/212.30.30

17. rue Ernest Blerot 1, 1070 Brussels, tel.: 02/233.49.47 (French-speakers) and 02/233.40.15 (Dutch-speakers), fax: 02/233.40.32, egalite@meta.fgov.be

18. <http://users.skynet.be/lavoixdesfemmes/accueil.htm>, 20, rue de l'alliance, 1210 Brussels, tel.: 02/218.77.87

19. info@gams.be, www.gams.be. rue de Brialmont 11, 1210 Brussels, tel./fax: 02/219.43.40



from its important work to combat female genital mutilation, the association carries on the following activities aimed at countering the practice of forced marriage:

- awareness-raising targeting the communities concerned through ad hoc events. For instance, in 2004 the GAMS held an open day against forced marriage on its premises, where it showed a video on the subject entitled "Les guignols d'Abidjan" ("The clowns from Abidjan"). This was a great success and involved many participants.
- the association's documentation centre has a stock of documents, books and films for use by the public (students, teachers, etc.);
- the GAMS participates in various colloquies and conferences on the subject;
- it also provides assistance and advice: individuals may apply for assistance with administrative matters and psychological counselling, dispensed in co-operation with another association "Centre Exile". The association pursues cases until they have been brought to a successful conclusion (it has worked on some thirty cases so far);
- the GAMS intends to produce a comic strip to raise awareness of forced marriage among young people, similar to the one it produced on female genital mutilation, which was launched in May 2005.
- "Aimer Jeunes"²⁰ is a non-profit association which runs a family-planning centre specifically for young people. Its objectives are to provide information and education on emotional and sexual matters. It pursues an overall preventive strategy, with emphasis on personal development, autonomy, responsibility and well-being in the emotional, family and social fields. It offers medical consultations and psychological, social and legal counselling.
- "D'une Rive à l'Autre"²¹ is a non-profit association offering assistance to professionals encounter-

ing situations of family violence in their work. It provides:

- forums;
- counselling services;
- opportunities to meet other professionals;
- information on family violence issues and on services and resources available to professionals.

The association's services are free and available to professionals on appointment. Appointments take place either at the professional's workplace or in the offices of the municipal authority;

- The school mediation service of the municipality of Saint-Gilles²² caters for young people with educational problems but also with questions about what they want out of life;
- Professor S. Alexander (Reproductive Health and Perinatal Epidemiology Unit) and Professor D. Piette (Health Education Promotion Unit) of the Brussels Free University and their teams have set up a web-site on emotional, sexual and reproductive matters.²³

The site allows consultation, co-operation, coaching and sharing of information regarding questions of health, well-being and rights in the spheres of reproduction and sexuality. The web-site address is <http://www.ulb.ac.be/esp/sphere-asr/>

It is aimed at both professionals and the general public.

Its objectives are:

- to offer a discussion forum and meeting space so that people working on these themes can pool ideas and experience;

21. Sophie Bruyr, Psychologist, Namur Municipal Authority, Social Affairs Department (1st floor), Esplanade de l'Hôtel de Ville 1 - 5000 NAMUR, tel.: 081/24.60.38, fax: 081/24.63.99

22. Mission locale de Saint-Gilles, chaussée de Waterloo 255, 1060 Brussels, tel.: 02 542 63 45 and 02 542 63 26

23. Katty Renard, Université Libre de Bruxelles, Ecole de Santé Publique, Promotion Education Santé (ULB-PROMES), Route de Lennik 808, CP596, 1070 Brussels, tel.: 02/555.40.81, fax: 02/555.40.49, Email: krenard@ulb.ac.be, Web-sites: ULB-PROMES <http://www.ulb.ac.be/esp/promes>; L'Ecole de santé publique: <http://www.sante-publique.net>; Brussels Free University (ULB): <http://www.ulb.ac.be>; Emotional, sexual and reproductive health project <http://www.ulb.ac.be/esp/sphere-asr/>.

- to form the basis of a network which will be opened up to other players and should allow the development of other forms of co-operation, not linked to the site, between partners or with new partners;
- sharing of tools and documentation with a view to improving the availability of existing information (e.g. research results, surveys, seminar proceedings, etc.) for both agencies and members of the public;
- identifying any needs for information, tools or services and training, more in tune with requirements;
- "Magenta"²⁴ is a non-profit association which deals with all issues linked to forced marriage and runs prevention activities concerning homophobia, sexism and heteronormativity;
- "Info-Veuage"²⁵ is a recognised further training association specialising in defence of the rights of surviving spouses and children. A growing number of its contacts are with people who have made life choices without being aware of their rights. Its aim is to raise young people's awareness of their rights, so as to enable them to choose their direction in life;
- The centre for migrant women and girls "Steunpunt Allochtone Meisjes en Vrouwen"/SAMV²⁶ launched a new project in 2005. The aim is to establish a dialogue with migrant communities on sensitive issues such as marriage, mixed-race relations, virginity, forced marriage and divorce. In recent years the centre's activities focused on traditions and customs. A national seminar was held on these themes, which could be repeated in the regions of Flanders. A video may also be brought out.
- The Payoke reception centre helps victims of human trafficking and

24. Health and health promotion, diversity in sexual orientation and gender issues, Rosine Horincq, 83 Avenue de Cortenbergh, 1000 Brussels, tel/fax: 02/524.42.16, mobile: 0478/40.43.14, magenta@contactoffice.be.

25. Rue de la Prévoyance 58, 1000 Brussels, tel.: 02/513.17.01, fax: 02/241.28.29

26. Contact : Judith Perneel, Rue Royale 136, 1000 Brussels, tel.: 02/209 34 69, fax: 02/209 34 65, steunpunt@samv.be, www.samv.be

20. Avenue du Cor de Chasse, 1170 Brussels, 02/511.32.20



arranged marriages; it is run by an association chaired by Patsy Sørensen, a former European Parliament member and former Antwerp alderman in charge of the city's civil register;

- The City of Antwerp has set up a unit to deal with marriages of convenience; it is run by Franck Beyens;
- The "Meldpunt gedwongen huwelijken" service, also in Antwerp, offers support and advice about the steps to take in cases of forced marriage.

A person forced into marriage may report the fact to the public prosecution service. If a marriage has been concluded under duress the person concerned may subsequently contest

its validity whether it took place before a Belgian civil authority, in a consulate or in a foreign country. If a forced marriage is planned but has not yet been concluded it may be prevented.

The police can assist victims of forced marriage by giving them addresses of law centres or victim support services.

"Maisons de justice" [law centres], run by the regional courts, can provide legal information to victims of forced marriage and help them to apply to the court for an annulment.

There are also victim support services which can offer emotional and psychological assistance to victims of forced marriage. Victim support falls within the remit of the Community

Ministries responsible for social welfare.

The Sub-Committee on Violence against Women of the Council of Europe Parliamentary Assembly Committee for Equal Opportunities between Women and Men held a hearing on forced marriages and child marriages in Antwerp on 18 October 2004.

Some school teachers run activities to inform pupils about various matters of concern to them including forced marriage (mention can be made of the action taken by Danielle Mironczyk, who teaches in a secondary school applying positive discrimination).

Bosnia and Herzegovina

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages came into force on 9 December 1964 by exchange of letters. Bosnia

and Herzegovina took over the convention on 1 September 1993.

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of

Article 27, was signed on 1 September 1993 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 1 September 1993 and has been ratified.

2. Provisions in private international law

3. Provisions in civil law

Family relations in Bosnia and Herzegovina are determined by civil law. There is no Family Law at state level of Bosnia and Herzegovina, but entity laws of the Federation of Bosnia and Herzegovina and Republika Srpska. The new Family Law was adopted in 2005 in the Federation of Bosnia and Herzegovina. The Family Law of Republika Srpska came into force in 2002. This law deals with the issue of marriage, family relations, adoption, and guardianship.

The family is not defined under the Constitution of Bosnia and Herzegovina and the constitutions of the Entities, but human rights and basic freedoms, the right to private and family life, home, and correspondence are ensured.

For the purpose of the above-mentioned Family law, the family is defined as the "community life of parents and children and other relatives".

3.1. Marital capacity

In order to marry, a person must either have reached his or her majority or have the permission of a court. The age of majority is 18 for both sexes. Permission to marry may not be granted in any circumstances to minors under 16 years of age. Permission to marry may be granted by the judge to minors above 16 years of age if he considers that the minor is physically and mentally capable to exercising the rights that result by marriage.

3.2. Consent

Marriage is based on the free will of the parties involved, with equality and mutual respect between the spouses.

3.3. Celebration of marriage

Only civil marriage is recognised in law. Marriage must be celebrated in the presence of the registrar. A religious marriage may, however, be celebrated following the civil ceremony.

3.4. Annulment of marriage

If the rules on consent or the celebration of marriage are not observed there are grounds for annulment.

Bogus marriages (i.e.. marriages contracted for reasons other than that of leading a shared life) are void.

Marriages contracted under threat are not valid.



4. Protection measures

5. Provisions in criminal law

5.1. Classification of forced marriage

A Human Rights Committee report notes that Bosnia and Herzegovina recognises various offences which may involve forced marriage. Crimes of violence against women are among them. Under Article 221 of the Criminal Code, rape within marriage is an offence – defined as involving force or the threat of direct assault. No mention is made of situations where psychological duress is exercised.

Under Article 232 of the Criminal Code, the competent person or the registrar who celebrates an unlawful marriage is liable to a prison sentence of up to one year.

Under Article 233 of the same code, a person of legal age who lives in an extramarital community with a minor who has reached the age of 14 years is liable to a prison sentence between three months and three

years (paragraph 1). A parent, adopter, or guardian who allows the minor who has reached the age of 14 years to live with another person in extramarital community, or leads him to this act is liable to the same sentence (paragraph 2). If the behaviour defined under paragraph 2 is done out of interest, the perpetrator is liable to a prison sentence between six months and five years and to a fine (paragraph 3). If a marriage is entered, criminal prosecution will not take place, and if it is already taking place it will be terminated.

Under Article 236, a parent, adopter, guardian, or other person that abuses an underage person or by outright disregard of his/her duties of supporting and caring for the child neglects an underage person, he or she is supposed to be taking care of, is liable to a prison sentence between

three months and three years (paragraph 1).

Under Article 237, whoever, with an outright violation of their legally binding family duties, leaves a member of the family who is not able to take care of himself/herself in a difficult position is liable to a prison sentence between three months and three years (paragraph 1). If a member of the family, due to the same reasons, dies, or earns seriously harm his health, the perpetrator is liable to a prison sentence between one and eight years (paragraph 2). When deciding on the punishment, the court can set the perpetrator with a condition that he or she fulfills his or her responsibilities towards the child (paragraph 3).

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

7. Policies and approaches

Croatia

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages came into force on 9 December 1964 by exchange of letters. Croatia took over the convention on 12 October 1992.

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 9 September 1992 and ratified in 2001.

The optional protocol was also signed.

- The 1989 United Nations Convention on the Rights of the Child was signed on 12 October 1992 and has been ratified.

2. Provisions in private international law

The form of marriage celebration is governed by the law of the place where the marriage is contracted.

This means that a marriage contracted by a Croatian national in a foreign state and in accordance with the

law of that state is recognised as formally valid.

3. Provisions in civil law

Under the Croatian constitution (Article 45) the legal age of majority is 18 years.

The Marriage and Family Relationships Act of 14 July 2003 sets out requirements for the conclusion and validity of marriages.

3.1. Marital capacity

Marriage may be contracted by persons who have reached the age of 18 years at the time of the marriage (Article 26(1)).

A competent court may authorise a person who has reached sixteen

years of age to marry if it can establish that the person has acquired the physical maturity necessary for assuming the rights and duties associated with marriage (Article 26(2)). Before taking its decision the court may hear the minor who has made



the application and his or her parents or guardians.

People suffering from mental illness, people with mental disabilities who are incapable of understanding the significance of marriage and its associated obligations, and people whose judgment is impaired are not allowed to contract a marriage (Article 27).

3.2. *Consent*

It is a necessary condition of marriage that two persons of different sexes should declare, in the presence of a competent authority, that they wish to contract the marriage (Article 24(1)).

The marriage will not be valid if consent has been obtained under duress (Article 24(2)). The law no

longer permits future spouses to be represented by a family member, as marriage by proxy has been done away with.

3.3. *Celebration of marriage*

Before the new Family Code was adopted in December 1998, family relationships were regulated by the 1978 Marriage and Family Relationships Act. Marriage had to be celebrated before a competent representative of government because civil marriage was compulsory and the civil celebration had to take place before any religious ceremony – the penalty for failure to observe this rule being imprisonment for a year.

The new Civil Code which came into force on 1 July 1999 redrew the rules on marriage, and people may

now choose either a civil or a religious ceremony. Croatian nationals may marry in the presence of representatives of a religious community recognised by the Parliament of the Republic of Croatia, or before a civil authority. In each case the person officiating will check, on behalf of the state and in accordance with the law, that all the pre-conditions for contracting a marriage have been met.

3.4. *Annulment of marriage*

If all the formal and substantive requirements for marriage have not been met the marriage is void.

Under Article 24(2) of the July 2003 Act, the fact that consent was obtained under duress is a ground for annulment.

4. *Protection measures*

The legal age of consent to sexual activity is 14 years.

5. *Provisions in criminal law*

5.1. *Classification of forced marriage*

The Criminal Code as amended in October 1997 came into force on 1 January 1998.

It does not contain any specific offence of forced marriage.

Nonetheless, penalties for ordinary offences such as assault and rape may be applicable to forced marriage.

The Criminal Code includes a new form of words concerning “acts equivalent to the sex act”, namely any act which is not heterosexual penetration but which has a sexual component, such as touching without penetration. Such acts are now punishable if they are committed with a child (i.e. someone under 14 years of age) or with the use of force or abuse of authority, or in similar circumstances.

There is a further category of acts with sexual content that are not equivalent to the sex act, which are punishable under similar circumstances but attract lesser penalties.

Chapter 14 of the Criminal Code enumerates crimes against sexual freedom or morality. It includes the crime of rape, which is defined in Article 188.

Anyone who constrains another person by force or by threat to that person's life, or who falsely imprisons another person, for the purpose of engaging in sexual relations or an act equivalent to the sex act is liable to a prison sentence of between one and ten years.

Anyone who commits a criminal offence of the type described in the first paragraph of this article with particular cruelty or humiliation, or is one of a number of individuals engaging in more than one sex act or the equivalent against the same person, is liable to a prison sentence of at least three years.

If the commission of a criminal offence of the type described in the first paragraph of this article causes the death of the person raped, or severe health damage, the perpetrator shall be liable to imprisonment for a period of at least three years.

If a criminal offence of the types described in the second or third paragraphs of this article is committed against a minor, the perpetrator is liable to at least five years' imprisonment.

If the commission of a criminal offence of the type described in the second paragraph of the article has the consequences described in the third paragraph of the article, the perpetrator is liable to at least five years' imprisonment.

Rape has thus been recently redefined in Croatia to include any sexual act or the equivalent committed by force, through the abuse of authority or under coercion. This implies that rape may be committed within marriage.

5.2. *Prosecutions in cases of forced marriage*

The offence of rape automatically attracts prosecution, whereas under the old criminal code proceedings could be initiated only if the victim asked the public prosecution service to act.



6. Provisions of the law on foreign nationals

7. Policies and approaches

A parliamentary committee on gender equality was set up in 2001.

A new human rights office, including a gender equality unit, was established in 2001.

Guidelines have been issued on police response to domestic violence.

A coordinator has been appointed to head a campaign against human trafficking.

Victims of violence are accommodated in reception centres run by voluntary bodies.

Members of the public prosecution service and the judiciary have undergone training on European rules concerning violence in the family.

Cyprus

1. International agreements

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 23 July 1985 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 7 February 1991 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of

Parental Responsibility and Measures for the Protection of Children, which has not yet entered into force, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

3. Provisions in civil law

The Marriage Act (104(I)) 2003 lays down substantive and formal requirements for marriage.

3.1. Marital capacity

The minimum marriage age is 18 years (Articles 14 and 15). A person

may be authorised, for serious reasons, to marry at the age of 16.

3.2. Consent

Marriage must be contracted with the free and full consent of the spouses (Article 14).

3.3. Celebration of marriage

3.4. Annulment of marriage

If the spouses have consented under duress the marriage is void (Article 13).

4. Protection measures

5. Provisions in criminal law

5.1. Classification of forced marriage

No specific offence of forced marriage is recognised in the Criminal Code. However, Article 5 of Act 119 (1)2000, on the prevention of vio-

lence in the family and the protection of victims, defines rape or attempted rape of spouses as a crime (see Criminal Code, Articles 144-146).

Article 154 of the Criminal Code lists seven penalties for breaches of

the law in relation to marriage, including bigamy (see Articles 178-180).

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

7. Policies and approaches

Czech Republic

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages came into force on 9 December 1964 by exchange of letters. The

Czech Republic took over the convention on 22 December 1993.

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in

accordance with the provisions of Article 27, was signed on 22 February 1993 and has been ratified.

- The United Nations Convention on the Rights of the Child, of 1989,

was signed on 22 February 1993 and has been ratified.

2. Provisions in private international law

3. Provisions in civil law

The capacity of physical persons to acquire rights and obligations originates when they are born. Viable unborn children have the same capacity.

Full legal capacity is acquired on reaching the age of majority.

The age of majority is 18 years. Majority cannot be acquired before that age except through marriage. Majority thus acquired cannot be lost through the dissolution or annulment of the marriage.

3.1. Marital capacity

A minor may not contract marriage unless authorised to do so by a court for serious reasons. The minor must be aged 16 or over.

If the minor had not reached his or her 16th birthday the marriage is deemed not to have been concluded.

3.2. Consent

Marriage may not be entered into by a person who has been deprived of legal capacity.

A person whose capacity to contract legal agreements is restricted may marry only subject to the approval of a court, granted in view of the social benefit of the marriage.

Marriage may not be contracted by a person suffering from a mental disorder unless a court decides that his or her state of health is compatible with the social purpose of the marriage.

Marriage is contracted by means of a free, full and mutual declaration by a man and woman who wish to

take one another for husband and wife.

Marriage is deemed not to have been contracted if the man or woman was constrained by means of physical violence to make the marriage declaration.

3.3. Celebration of marriage

The declaration must be made publicly and solemnly in the presence of two witnesses.

Marriage may be celebrated in civil or religious form.

- In civil marriage the intending spouses make a declaration in the presence of the mayor or a municipal councillor representing the administrative unit in which one of the two is domiciled. If the life of one of the intending spouses is in imminent danger, the marriage may be celebrated in any mayor's office;
- In religious marriage the intending spouses make a declaration in the presence of the competent religious body and the person entrusted with that function by the competent church. Marriages celebrated in religious form must meet the conditions for civil marriage. The marriage may be celebrated only after the intending spouses have submitted a certificate issued less than three months previously by the competent civil authority, attesting that they have met all the statutory requirements for the celebration of marriage;

If the intending spouses have celebrated a civil marriage, a subsequent religious ceremony will have no legal effect. If they have celebrated a religious marriage, they may not subsequently celebrate a civil marriage.

3.4. Annulment of marriage

A court may annul a marriage on its own initiative in the following circumstances:

- if a minor was married without the approval of a court, unless the husband who was a minor at the time of the marriage has since reached 18 years of age or the wife has become pregnant;
- total absence of legal capacity on the part of one of the intending spouses;
- if, when the marriage was celebrated, the capacity of one of the intending spouses was restricted or if he or she was suffering from a mental disorder;
- if the declaration of marriage was made as the result of a threat or a mistake with regard to the identity of one of the partners.

A marriage that is annulled is deemed never to have been contracted.

A marriage is deemed not to have been contracted if the marriage declaration was made under physical duress; if it involved a minor aged under 16 at the time of the ceremony; if a religious marriage was not duly notified to the civil authority; or if the rules of marriage by proxy were not observed.

4. Protection measures

5. Provisions in criminal law

The Criminal Offences Act was passed in 1961: it contains general provisions with regard to criminal law.

5.1. Classification of forced marriage

Forced marriage is not a specific offence.

The absence of relevant provisions in relation to violence results in a sit-

uation of total impunity for forced marriage.

The offence of rape is not relevant either since it depends upon the use of force rather than the absence of consent. Rape within marriage is not a specific offence.



6. Provisions of the law on foreign nationals

7. Policies and approaches

Denmark

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters, was signed on 17 October 1963 and ratified on 20 August 1965.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 21 April 1983 and has been ratified.
- The 1989 United Nations Convention on the Rights of the Child was signed on 19 July 1991 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable

Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1st January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

3. Provisions in civil law

3.1. Marital capacity

3.2. Consent

By presenting themselves together and in person before the relevant

authorities and by declaring their intention to marry, the intending spouses give their consent to marry, which is a condition for validity of a

marriage (Article 20 (2) of the Marriage Act).

4. Protection measures

5. Provisions in criminal law

6. Provisions of the law on foreign nationals

Rules on family reunification are set out in the Aliens Act.

They were tightened up by Act 365 of 6 June 2002, which introduced new immigration policy, in particular amending the Aliens Act.

The Act of 6 June 2002 came into force on 1 July 2002, and since that date family reunification has no longer been recognised as a right, even for spouses and children – each application now being assessed individually. On the other hand, the assessment process can result in family reunification being authorised for people who do not meet the statutory criteria.

The new Act also reduced the categories of people potentially eligible for family reunification, and spouses are now covered only if both are aged over 24 years. There is a further requirement that, after reunification,

they should reside at the same address, and both must desire to be united.

The law stipulates that foreign nationals who wish their families to come to Denmark must meet certain general conditions: they must possess a residence permit not of the type issued for purposes of study in Denmark; they must be capable of providing for the family, which means having a regular monthly income at a level appropriate to the size of the family; and their accommodation must be adequate to house the family members.

The conditions with regard to housing are set out in a specific regulation: no more than two people must be accommodated in one room unless there is at least 20 m² of space for each occupant. If the accommodation is rented, the lease must have at

least three years to run from the date on which the application is submitted.

People who wish a spouse to come to Denmark have to meet special conditions. Since the Act of 6 June 2002 came into force, a residence permit of unlimited duration may be obtained only after seven years' residence in the country. Thus it is only after ten years that spouses can be reunited. Both members of the couple must also have more ties in Denmark than they have elsewhere. However, the couple does not have to satisfy the condition of ties if the spouse living in Denmark has been a Danish national for 28 years or was born and raised in Denmark or came to Denmark as small child and was raised in Denmark and has resided in Denmark for 28 years.



The foreign national making the application must provide an “economic guarantee” of at least DK 50 000 (EUR 6 700) to cover any future public expenses to support the new resident. This amount is revised annually.

The foreign national must not have received public financial assistance for a period of one year prior to submission of the application for family reunification, and must not receive any such assistance while the application is being processed.

The spouse will obtain a residence permit that is valid for one year and renewable. After three years he or she may obtain a permit valid for three years and renewable.

Residence permit to a child aged less than 15 years, un-married and having not started his/her own family will be granted if the parent resident in Denmark has the custody. These conditions for family reunification with children are deviated from the UN Convention on the Rights of the Child, the European Convention on Human Rights or other international obligations.

Denmark must respect Articles 8 and 12 of the European Convention on Human Rights, in particular the right for everyone to family life.

Under Article 44 of the constitution a foreign national can acquire Danish nationality only by means of an Act of parliament.

The Danish Nationality Act stipulates that naturalisation is the only means whereby foreigners can become Danish nationals. This requires a naturalisation Act passed by the Folketing, which has a special standing committee for nationality matters.

In a circular on the acquisition of Danish nationality through naturalisation, issued on 16 June 1999, the Ministry of Justice listed the rules that the Nationality Committee uses in considering applications for naturalisation. The circular mentions the particular case of foreign nationals who have married Danes: they are able to obtain naturalisation more rapidly than other applicants. Whereas the normal required length of residence in Denmark is nine years, the spouse of a Danish national will be eligible for naturalisation after six years depending on the duration of the marriage

Naturalisation is not available to any foreign national who owes money to the state, who is incapable of conducting an ordinary conversation in Danish or who has recently

been convicted of an offence. In the last mentioned case there is a provision for applications to be made after a stipulated waiting period, which depends on the nature of the offence.

Acquisition of Danish nationality requires renunciation of the applicant's original nationality, except in the case of refugees and citizens of countries where loss of nationality presents difficulties.

The circular equates cohabitation with marriage and stipulates that the period of required residence in Denmark may have been interrupted, provided, as a general rule, that the interruption did not last longer than one year. In the case of interruption, the total length of residence must be equivalent to the minimum required, and the foreign national must intend to settle in Denmark.

Applications for naturalisation are submitted to the local police. The applicant will be called for interview and the file will then be forwarded to the Ministry of Justice, which will check that he or she meets the requirements. Naturalisation is not automatic. There is no procedure for appealing decisions. If the application is accepted the foreign national's name will be added to the naturalisation bill currently in preparation.

7. Policies and approaches

Estonia

1. International agreements

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in

accordance with the provisions of Article 27, was signed on 21 October 1991 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 21 October 1991 and has been ratified.

2. Provisions in private international law

3. Provisions in civil law

3.1. Marital capacity²⁷

People who have reached the age of 18 years are entitled to marry (Article 3 (1)).

Minors aged between 15 and 18 years may marry subject to the writ-

ten permission of both their parents or their legal guardian (Article 3 (2)).

The permission of one parent is sufficient for a minor aged between 15 and 18 years to marry if the minor in question has only one parent, or if one parent is missing or has been deprived of legal capacity or of his or her parental rights (Article 3 (3)).

If one of the two parents or the guardian does not consent to the mar-

riage, a court may authorise it in response to an application by the other parent or the person who has parental authority. The court can authorise the marriage if it is in the minor's interest (Article 3 (4)).

Marriage is not possible between persons one of whom has been placed under guardianship due to his or her restricted active legal capacity (Article 4 (3)), excepted in cases spec-

27. The new Family Act will bring changes into the regulation of the exceptions in the legal age of marriage.



ified in Article 3 (2)-(4), which are those concerning minors mentioned above.

3.2. Consent

Marriage is contracted through the mutual desire of the future spouses (Article 2(1)).

3.3. Celebration of marriage

A marriage shall not be contracted if a future spouse does not confirm

his/her desire to marry or if a future spouse has not reached the marriageable age or if circumstances set out in Article 4 of the Act are obvious (Article 3 (2)).

The marriage must be contracted by the intending spouses, both of whom must be present in person at the same time.

The marriage will have legal effect only if it is registered in a public

office at the time it is celebrated (Article 1(2)).

3.4. Annulment of marriage

The marriage will be invalid if one of the future spouses does not confirm consent or is not of marriageable age, or if the conditions laid down in Article 4 are not met (Article 2(2)).

4. Protection measures

5. Provisions in criminal law

6. Provisions of the law on foreign nationals

7. Policies and approaches

Annika Hüvanen notes: "In discussion of forced marriage in Estonia, there is a need for the concept to be defined because understandings of it differ according to the context in multicultural societies. For example, there are differences in Europe

between forced marriages and arranged marriages. The definition of a forced marriage is a marriage concluded without the full consent of both parties and in which violence is a factor.

It would be appropriate to extend the notion of forced marriage to include bridal kidnappings and violent treatment by third parties - although the kidnapping of wives is not a characteristic tradition in Estonia."

Finland

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters. Finland adopted the Convention on 18 August 1964.
- The Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages has been signed.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 4 September 1986 and has been ratified.
- The 1989 United Nations Convention on the Rights of the Child was signed on 21 June 1991 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which has not yet entered into force, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

3. Provisions in civil law

Marriage is governed by the Marriage Act of 13 June 1929/234, as amended by the Act of 16 April 1987/411, Part I, Conclusion and dissolution of marriage.

According to the Marriage Decree of 6 November 1987/820, Chapter 2, Section 9, the purpose of marriage is to found a family for the mutual benefit of its members and the preservation of society. Marriage is intended to be permanent so that all the mem-

bers of the family shall create a happy home.

3.1. Marital capacity

Chapter 2, Section 4 of the Marriage Act of 13 June 1929/234, as amended by the Act of 16 April 1987/411, Part I, provides that no-one under 18 can marry. Where there are special reasons for doing so, the Ministry of Justice may, however, give

permission for an under-18-year-old to marry.

Before such a decision is taken, the person legally responsible for the minor must be consulted if his or her opinion might have a determining effect on the outcome.

3.2. Consent

Chapter 1, Section 1 of the Act states that a woman and man who have agreed to marry must make a



commitment. The marriage must be concluded by means of a marriage ceremony. It must be certified before the ceremony that there are no impediments to the marriage.

Under Chapter 2, Section 5 of the Act, a person subject to guardianship may not marry without the guardian's permission.

A court may allow the marriage to take place if the guardian does not have valid reasons for withholding permission.

3.3. *Celebration of marriage*

Chapter 4, Section 14 of the Act states that the celebration of marriage requires the presence of a family member and another witness at either a religious or a civil ceremony. A religious marriage ceremony must take place in either a Lutheran Evangelical church or a Greek Orthodox church, or within another religious community which the Minister of Education has authorised to conduct marriage ceremonies.

Chapter 4, Section 15 of the Act stipulates that the couple must be present together at the marriage ceremony. Once the engaged couple have replied affirmatively when asked by the official conducting the ceremony

if they wish to marry one another, the official must declare them man and wife.

Chapter 4, Section 16 of the Act states that, in addition to the stipulations of Section 15, religious communities which conduct marriages may lay down other conditions and formal requirements. The requirements for civil ceremonies are set out in a Presidential decree.

Under Chapter 4, Section 17 of the Marriage Act of 13 June 1929/234, as amended by the Act of 16 April 1987/411, Part I, a religious ceremony may be conducted:

- in the Lutheran Evangelical Church by a minister of the church;
 - in the Greek Orthodox Church by a priest;
 - in another religious community by a person authorised therein to conduct marriages.
- Civil ceremonies may be conducted by:
- an elected lay magistrate or district court judge;
 - the president or another judge of the local administrative court;
 - a local registrar.

Under Chapter 4, Section 18 of the Act, the marriage ceremony may not

be conducted if the person officiating is aware of an impediment to it or if one of the partners is manifestly incapable of understanding the significance of marriage due to a disturbed state of mind. Before conducting the ceremony, the person officiating must ensure that checks have been carried out to determine that there is no impediment to the marriage, in accordance with Sections 11-13 of the Act. If the certificate required under Section 13 was issued more than four months before the marriage date, the marriage may not proceed on the basis of that certificate.

3.4. *Annulment of marriage*

Under Chapter 4, Section 19 of the Marriage Act of 13 June 1929/234, as amended by the Act of 16 April 1987/411, Part I, the marriage ceremony must be declared void if it was not conducted in accordance with Section 15 or if it was conducted by an unauthorised person.

The President of the Republic may decide, for special reasons, to declare valid a ceremony that would be void under the terms of the preceding paragraph.

4. *Protection measures*

5. *Provisions in criminal law*

5.1. *Classification of forced marriage*

There is no specific offence of forced marriage under the Finnish Criminal Code.

However (according to a non-official translation) Chapter 20 of the code, which is concerned with "sexual offences" (RI 101, p. 1737, Section 1, Rape (563/24.07.1998)), provides:

(1) anyone who compels another to have sexual intercourse through the use of threat or violence is guilty of rape and liable to a prison sentence of between one and six years;

(2) anyone is likewise guilty of rape who takes advantage of another person's defencelessness and has sexual intercourse with that person after having rendered him or her unconscious or induced a state of incapability through fear or for a similar reason;

(3) persons who attempt rape are liable to prosecution.

Section 2 of the same chapter (non-official translation, Chapter 20, RI 101, p. 1,737, Section 2, Aggravated rape (563/24.07.1998)), defines aggravated rape as involving:

- infliction of serious physical injury, serious illness or threat to life;
- commission of the offence by more than one person, or with the infliction of severe physical or mental suffering;
- commission of the offence in a particularly brutal, cruel or humiliating manner;
- use of firearms, knives or other lethal weapons, or other forms of serious violence.

Aggravated rape is punishable by imprisonment for between two and ten years.

Attempted aggravated rape is also an offence.

Section 3 (non-official translation, Chapter 20, RI 101, p. 1,737, Section 3, Sexual offences (563/24.07.1998)), provides:

(1) if rape involving a lesser degree of violence or threat is considered to have been committed in mitigating circumstances, the offence is deemed to be that of using duress in sexual intercourse and is punishable by imprisonment for a maximum period of three years;

(2) a person who has compelled another to have sexual intercourse by means of a threat other than that of the type described in Section 1(1) is guilty of using duress in sexual intercourse;

(3) attempted use of duress in sexual intercourse is an offence.



Under Section 4 (“Duress in sexual acts”) (non-official translation, Chapter 20, RI 101, p. 1737, Section 4 (563/24.07.1998)):

(1) anyone who, by means of violence or threat, compels another person to engage in a sexual act other than that of the type described in Section 1, or who, in the course of such an act, violates [that person’s] right to sexual freedom, is guilty of using duress in a sexual act and liable to a fine or a prison sentence of up to three months;

(2) attempted use of duress in a sexual act is an offence.

Section 5 (“Sexual abuse”) (non-official translation, Chapter 20, RI 101, p. 1737, Section 5 (563/24.07.1998)) states:

(1) if a person abuses his position and, by means of deception, leads

another person to engage in sexual intercourse or another sexual act that constitutes a violation of [the latter’s] right to sexual freedom, or if such an act involves:

- a person aged less than 18 years who, in a school or other institution, is subject to the authority of, under supervision by, or similarly subordinate to the perpetrator;
- a person aged less than 18 years whose sexual independence is diminished by immaturity or age difference, or whose immaturity is blatantly abused by the perpetrator;
- a patient of a hospital or other institution whose capacity for self-defence is reduced as a result of illness, disability or other infirmity;
- a person who is particularly dependent on the perpetrator, or

whose dependence the perpetrator has blatantly abused, the perpetrator is guilty of sexual abuse and liable to a fine or a prison sentence of up to four years;

(2) a person is also guilty of sexual abuse who takes advantage of another’s inability – due to unconsciousness, illness, disability or any other factor – to defend himself or herself or to express a decision, and who has sexual intercourse or engages in some other sexual act with that person, or subjects the person to an act that violates his or her sexual freedom;

(3) attempted sexual abuse is an offence.

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

7. Policies and approaches

France

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters, was signed on 10 December 1962.
- Three bilateral agreements concerning personal status have been concluded:
 - the Franco-Polish Agreement of 5 April 1967;
 - the Franco-Yugoslav Agreement of 18 May 1971;
 - the Franco-Moroccan Agreement of 10 August 1981 on the status of persons and the family and on judicial cooperation.²⁸
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into

force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 14 December 1983 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 8 August 1990 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which has not yet entered into

28. Franco-Moroccan Agreement of 10 August 1981 on the status of persons and the family and judicial cooperation, Rev. crit. DIP 1983, p. 531; and see P. Decroux, JDI 1985, p. 49; F. Moneger, Rev. crit. DIP 1984, pp 29 and 267.

force, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.²⁹

29. Rev. crit. DIP, 1996, p. 813, commentary by P. Lagarde, Rev. crit. DIP, 1997, p. 217; see also Rev. crit. DIP 2000, p. 133 on progress with ratifications, and F. Boulanger, De la Convention de la Haye de 1961 à celle de 1996 sur la loi applicable à la responsabilité parentale et la protection des enfants, re quem pour la loi nationale?, Festschrift F. Sturm, Editions juridiques de Liège, 1999. This agreement replaces the Hague Convention of 5 October 1961 on the protection of children, which came into force on 10 November 1972 (see Rev. crit. DIP 2000, p. 115; and G.A.L. Droz, JDI 1973, p. 603; Y. Lequette, “Protection familiale et protection étatique des incapables”, Biblio. DIP 1976, n° 198 et seq.; Rép. dr. int. Dalloz, 1998, n° 9-81; F. Boulanger, “Les rapports juridiques entre parents et enfants” Economica, 1998, n° 233-239.

2. Provisions in private international law

There are few French provisions concerning choice of law or jurisdiction.

Article 3 of the Civil Code states that: “Statutes relating to the status

and capacity of persons govern French persons, even those residing in foreign countries.”

Private international law has not been codified in France, although

codification has been attempted, notably in connection with revision of the Civil Code after the second world war, and (specifically in relation to international law) with the



plan to add a new Book IV to the Civil Code.³⁰ Choice-of-law rules have been included in certain statutes in the field of family law. The Divorce Law Reform Act of 11 July 1975, for example, introduced into the Civil Code a new Article 310 – the only article in Chapter V of the code (“Conflict of laws in matters of divorce and judicial separation”).

With regard to the conclusion of marriages there are separate provisions in relation to substantive conditions, formal conditions and penalties for breach of the conditions.

As regards the substantive conditions for marriage it is the law of the country of nationality that applies. This principle derives direct from Article 3 of the Civil Code and means that a marriage contracted by a French national abroad is void if it does not meet the substantive conditions for marriage under French law. A foreign national being married by a French civil authority must prove compliance with the conditions for marriage laid down by his or her national legal system. The general principles on proof of compliance with foreign law are applied. For example, the parties can show that they meet the requirements by submitting an affidavit of law drafted in French and issued by a consulate or embassy of the relevant foreign state in France, by a foreign lawyer or by a French lawyer who specialises in the law in question. The affidavit will mention the relevant statutes and case law.³¹ If the spouses have the same nationality the applicable law will be their shared national law. If they are of different nationalities the two systems of law will be applied distributively. In relation to bilateral impediments to marriage based on kinship or bigamy, the two national systems of law will be applied cumulatively, which means in effect that the more rigorous of the two will apply.

If the foreign legal system is at odds with imperative provisions of French law or major principles of French law that are deemed essential, it will not apply. This is what is

known as the “public policy exception”. For example, with regard to marriages celebrated in France, public policy will not permit application of foreign legislation that allows marriage at an age below the legal minimum for marriage in French law. In the case of marriages celebrated abroad, considerations of public policy have less force. They will not prevent observance of rights acquired abroad in a lawful manner and under foreign law that would be contrary to public policy were it implemented in France.

With regard to the formal requirements for marriage, the principle applied is that of *locus regit actum*. Marriages between foreign nationals in France are subject to the same conditions with regard to formalities and public notice that apply to French nationals. No other form of marriage, even if it is in accordance with the personal status of the spouses, is permitted. It is nonetheless accepted, on a reciprocal basis and in accordance with Articles 48 and 170 of the Civil Code concerning consular marriage of French nationals abroad, that foreign diplomatic staff or consuls in France may celebrate marriages between their own nationals provided that the law of the state in question recognises civil marriage. Both spouses must, however, have the same nationality.³²

The principle governing marriages celebrated abroad is set out in Article 170, paragraph 1 of the Civil Code: “A marriage contracted in a foreign country between French persons [or] between a French person and an alien is valid where it is celebrated according to the formalities usual in that country [...]” This principle of applying local formalities has been extended to marriages between foreign nationals. It has always been accepted, on the basis of Article 48 of the Civil Code, that French diplomatic and consular personnel abroad may celebrate marriages between French nationals. An Act passed on 29 November 1901 added two paragraphs to Article 170, authorising consular marriage between French nationals and foreign nationals in cer-

tain countries which are listed in a decree of 26 October 1939. Under Article 170, paragraph 1 of the Civil Code, when a French national is married abroad the requirement of prior public notice, as laid down in Article 63 of the Civil Code, must be observed, as must the requirement of Article 146(1), added in 1993, that the French national must be present at the ceremony.³³

The Franco-Moroccan Agreement on the status of persons and the family and on judicial cooperation provides, in Article 5, that the substantive marriage conditions applying to each spouse are those laid down in the law of the state of which he or she is a national. The formal conditions are specified in Article 6 of the Convention, and a distinction is made between the form of marriage between French nationals abroad and that applicable in mixed marriages. In the first case, the intending spouses may choose between the form provided for in the law of the place where the marriage is celebrated and the consular form of marriage. In the second case the law of the place of celebration applies.

With regard to penalties for non-observance of marriage requirements, there is a distinction depending on whether or not the marriage has been celebrated. Prior to celebration of the marriage, if any condition has not been observed the civil authority may refuse to celebrate it. In such cases the procedure for raising an objection (under Articles 172 et seq. of the Civil Code) comes into play, and the marriage may be postponed (pursuant to Article 175-2), the aim being to prevent marriages of convenience.

Once a marriage has been celebrated the only sanction is an action for annulment, and this has certain legal implications. In principle, the penalty for breach of a given condition is that laid down in the law governing the condition which has been breached. With regard to conditions of substance, the nature of the penalty and thus the procedure for an annulment action will be that pre-

30. Articles 2282-2316, texts and commentary, J. Foyer, JDI, 1971, p. 31.

31. See Instruction générale de l'état civil of 11 May 1999, Article 533.

32. See Instruction générale de l'état civil of 11 May 1999, Article 561.

33. On the classification of this type of provision, see Court of Cassation, 1st Civil Chamber, 15 July 1999, RCDIP 2000, p. 207, note L. Gannagé.



scribed by the national law that has been breached.

3. Provisions in civil law

3.1. Marital capacity

Both males and females before their 18th birthday may not contract marriage. Since the Civil Code of 1804, a male before his 18th birthday and a female before her 15th birthday had not the marriageable age, but on 29 March 2005, the Senate adopted an amendment to the proposed law on combating violence within the couple, increasing females' marriageable age from 15 to 18 years.

Nevertheless, the public prosecutor (state law office) of the place where a marriage is to be celebrated may grant exemption as to age for serious reasons (Article 145 of the Civil Code).

3.2. Consent

There is no marriage where there is no consent (Article 146 of the Civil Code).

Minors may not contract marriage without the consent of their father and mother; in the case of disagreement between the father and mother, the disagreement is treated as consent (Article 148 of the Civil Code).

Where one of the parents is dead or unable to express his or her intention, the consent of the other suffices (Article 149 of the Civil Code).

Where the father and mother are dead or unable to express their intention, the grandfathers and grandmothers take their place. Where there is disagreement between a grandfather and a grandmother in the same lineage or disagreement between the two lineages, the disagreement is taken as consent (Article 150 of the Civil Code).

A lawfully acknowledged illegitimate child who has not reached the full age of 18 may not contract a marriage without the consent of whichever parent acknowledged him, or of both parents if he was acknowledged by both. If the father and mother disagree the disagreement is taken as consent. The provisions of Article 149 are applicable to illegitimate children who are minors (Article 158 of the Civil Code).

An illegitimate child who was not acknowledged, or one who, after being acknowledged, lost father and mother, or whose father and mother are unable to express their intention,

may not marry before the age of 18 without the consent of the family council (Article 159 of the Civil Code).

3.3. Celebration of marriage

Marriage is celebrated publicly before the civil authority of the municipality where one of the spouses has his or her domicile or residence at the date of the public notice provided for by Article 63 and, in the event of exemption from giving public notice, at the date of the exemption provided for by Article 169 (Article 165 of the Civil Code).

3.4. Annulment of marriage

A marriage contracted without the free consent of the two spouses, or of one of them, may be contested only by the spouses or by the spouse whose consent was not free (Article 180 of the Civil Code).

In a case of that kind an application for annulment ceases to be admissible if there has been continuous cohabitation for six months since the spouse acquired his or her full freedom (Article 181 of the Civil Code).

4. Protection measures

If the health, safety or morality of a non-emancipated minor is at risk or his or her upbringing is seriously compromised, a court may – on application by the father and mother

jointly, by one of them, by the person or service responsible for the minor, or by a guardian, the minor in question, or the public prosecution service – instruct that welfare measures

should be taken. The court may, exceptionally, act on its own initiative (Article 375 of the Civil Code).

5. Provisions in criminal law

5.1. Classification of forced marriage

There is no specific offence of forced marriage in the French Criminal Code.

Nonetheless: "Any act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise is rape. Rape is punishable by 15 years' imprisonment" (Article 222-23 of the Criminal Code). The definition includes digital penetration of the anus or vagina and acts of fellatio without consent. Forced marriage can be regarded as rape of a spouse.

Proceedings for complicity may be taken against the parents of a minor. Rape is placed in the most serious category of offences.

The penalty for rape is 20 years' imprisonment if

- the victim is aged under 15 years, or;
- the victim is a person whose particular vulnerability, due to age, illness, infirmity, physical or psychological deficiency or pregnancy, is apparent or is known to the perpetrator (Article 222-24 of the Criminal Code).

French criminal law absolutely excludes the concept of consent, whatever the age of the perpetrator, if the victim is less than 15 years old. In fact, in such circumstances the victim's age is an aggravating factor and the perpetrator is liable to 20 years' imprisonment.

Offences of a sexual nature or those committed against minors, as described in Article 706-47 of the Code of Criminal Procedure, are not covered by the amnesty provisions introduced in a law of 6 August 2002. Article 706-47 is concerned with



minors who are victims of murder or manslaughter preceded or accompanied by rape or acts of barbarity.

The presumption that spouses consent to sexual acts in the context of marital intimacy applies only in the absence of proof to the contrary (decision of the Court of Cassation, Criminal Chamber, 11 June 1992).

The Internal Security Act of 18 March 2003, "Sarkozy Act", provides

(Title I, Chapter VIII) for measures to combat human trafficking and procuring. Under Article 42, any person who has been a victim of exploitation through prostitution qualifies for protection and assistance arrangements, provided and coordinated by the administrative authorities in active cooperation with various welfare agencies.

In the case of under-age victims Act 98-468 of 17 June 1998 extends the limitation period to 10 years after the victim reaches majority, whoever the aggressor. The Act applies to offences which were not time-barred at 20 June 1998.

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

The applicable legislation is Order 45-2658 of 2 November 1945 on foreigners' entry into and residence in France, as amended by Act 2003-1119 of 26 November 2003 on control of immigration, residence of foreigners in France and nationality, published in the official gazette on 27 November 2004.

The order sets various requirements for entry and residence of foreigners:

"Any foreign national aged over 18 years who wishes to reside in France must, on expiry of a three-month period following his or her entry to French territory, obtain permission to do so. This will take the form of either a temporary permit [...] or a residence card [...]. Where the law so provides, initial permission to reside shall be subject to the foreign national's republican integration into French society, which shall be assessed, in particular, in the light of his or her knowledge of the French language and of the principles governing the French Republic. [...] In assessing whether the integration requirement has been met, the government's representative at *département* [county] level, or in Paris the Commissioner of Police, may consult the mayor of the municipality in which the applicant for permission to reside is living." (Article 6)

Under the title "Foreign nationals holding temporary permits" it is provided: "A temporary residence permit bearing the designation 'Private and family life' shall be issued as of right to a foreign national not living in a state of polygamy who is married to a French national, on condition that he or she has entered French territory lawfully, that the couple have not ceased to cohabit, that the spouse has

retained his or her French nationality and, if the marriage was celebrated abroad, that it has already been entered in the French registers of civil status." (Article 17(4) of the 2003 Act amending Article 12 bis of Order No. 45-2658 of 2 November 1945).

"Renewal of the residence permit issued pursuant to paragraph 4 above shall be subject to cohabitation's not having ceased. If cohabitation has been interrupted on the initiative of the foreign national on the grounds of marital violence perpetrated by his or her spouse, the chief country administrative officer, or in Paris the Commissioner of Police, may still allow the permit to be renewed." (Article 17 of the 2003 Act amending Article 12 of the 1945 Order)

The title "Foreign nationals holding residence cards" includes the following provision: "Residence cards may be granted to the spouse, and to children who are minors or not yet aged 19, of a foreign national holding a residence card if they have been authorised to reside in France for the purpose of family reunification and meet the requirement of at least two years' continuous residence in France in accordance with current laws and regulations. [...] The decision to grant a residence card shall be subject to the applicant's republican integration into French society in accordance with Article 6."

The provisions for family reunification³⁴ have been amended to the effect that foreign nationals who have permission to reside in France and

have been doing so for at least one year may apply for family reunification in respect of their spouse and children aged under 18 years, including legally adopted children. Family reunification procedure does not apply to the families of nationals of EU and EEA members or Togo.

To qualify for family reunification, the applicant must have been living continuously in France for at least one year and must have a residence permit (or a receipt for an application for renewal of permission to reside, valid for at least one year). Under the Franco-Algerian Agreement of 28 December 1968 an exception is made for Algerian applicants, who do not have to meet the condition of one year's residence.

The applicant must have accommodation regarded as normal for a comparable family living in France. If the applicant does not have accommodation when the application is submitted, he or she may include with the application a promise to acquire it for the family's arrival. The size of the accommodation must be appropriate for the composition of the family and must meet the minimum standards for rented premises. This provision does not apply to Algerian nationals.

The applicant must prove that he or she has stable and regular resources sufficient to meet the family's needs. For purposes of this calculation all the resources of the applicant and his or her spouse are taken into account, independently of any family benefits. An income greater than the national minimum wage is considered sufficient. The form of proof required is evidence of earnings over the 12 months preceding the application.

34. Instruction DPM/DM2-3/2000/114 – NOR/INT/D/00048/C of 1 March 2000 on family reunification in respect of foreign nationals (Ministry of the Interior/Ministry for Employment and Solidarity, Journal officiel, 28 May 2000).



The applicant must certify that the family reunification applied for will not create a situation of polygamy in France.

When the application is approved the family members will receive the same form of permission to reside as is held by the foreign national who made the application.

If a couple ceases to cohabit, a temporary residence permit issued to the spouse of a foreign national may be withdrawn in the two years following its issue, or an application to renew it may be refused. If cohabitation ceases before permission to reside has been issued, the chief country administrative officer, or in Paris the Commissioner of Police, shall refuse to issue a temporary permit. If, however, cohabitation has been interrupted on the initiative of the foreign national on the grounds of marital violence perpetrated by his or her spouse, the chief country administrative officer may allow the permit to be renewed.

Under the Act of 26 November 2003, contracting a marriage of convenience has become an offence (Article 31). The Act creates a new Section 21 *quater*³⁵ of the Order of 2 November 1945, which states: "The fact of contracting a marriage for the sole purpose of obtaining, or enabling another person to obtain, a residence permit or for the sole purpose of acquiring, or enabling another person to acquire, French nationality is punishable by five years' imprisonment and a fine of EUR 15 000. The same penalties apply to arrangement or attempted arrangement of a marriage for the same purposes, and they shall be increased to 10 years' imprisonment and a fine of EUR 750 000 if the offence is committed by an organised gang."

Acquisition of nationality through marriage requires a number of conditions.

A foreign national married to a French person may obtain French nationality through a mere declaration procedure.

The foreign spouse must have permission to reside in France and must

wait for two years after celebration of the marriage before signing a declaration at the regional court in order to acquire French nationality. The waiting period is extended to three years if the foreign spouse cannot prove that he or she has resided continuously in France for at least a year since the marriage.

The declaration must be registered by the government minister responsible for naturalisation (the Minister for Employment and Solidarity). Registration may be refused. The spouse must not have been convicted of any offence or have been subject to an expulsion order, and he or she must demonstrate assimilation into the community in France, notably by having an adequate command of French.

Circular NOR/INT/D/04/00006/C, of 20 January 2004, from the Ministry of the Interior, Internal Security and Local Freedoms to Chief County Administrative Officers [*préfets*] in metropolitan France and the overseas départements and territories gives details on several issues, in particular marriages of foreign nationals with French spouses, mixed marriages celebrated outside France and offence of marriage of convenience.

Marriages of foreign nationals with French spouses

Temporary residence permits bearing the designation "private and family life" (Article 17 of the act)

"To counter the spread of marriages of convenience, paragraph 4 of the new Article 12 bis provides that foreign nationals married to French nationals may now be asked to meet a requirement of continuing cohabitation from the date of issue of the temporary residence permit. Proof of continuing cohabitation may, in most cases, take the form of a sworn declaration signed by both spouses, in the presence of your representative, that they have not ceased to cohabit. In cases where cohabitation is in doubt (eg where a marriage took place some considerable time previously and the applicant has just recently entered the country or submitted the application, or where the marriage is contracted by a foreign national illegally present in the country), additional proof or even a police check may be required for a permit to be issued.

The effect of such a step should not be to increase unnecessarily the burden of proof on those concerned, particularly where the applicant has entered France recently, immediately following a marriage celebrated abroad or shortly before a planned marriage in France, and the procedural requirements have been met."

Temporary residence permits and cohabitation

"The statutory length-of-marriage requirement for eligibility for resident status having been extended to two years, you must check, when a temporary permit is renewed for the first time and again when resident status is granted, that the cohabitation requirement is met."

Cohabitation is proven by submission of any document establishing that the spouses lead a shared life. Couples are also required to sign a sworn declaration. The cohabitation condition does not necessarily require the spouses to live under the same roof (Article 108 of the Civil Code).

"Under Article 17(7), applications for renewal of residence permits by foreign nationals who have ceased to cohabit for fear of marital violence on the part of a French spouse should nonetheless receive sympathetic treatment."

Residence cards and integration contracts

Article 21 of the 2003 Act amends the conditions for issue of a residence card under Article 14 of the Order.

"Issue of a residence permit shall be subject, in all cases, to an integration requirement under Article 6 of the Order. The aim is to assess the nature of the foreign national's intention in applying for residence by asking him or her to engage in a process of social and occupational integration in France based on a number of criteria: learning the language, becoming familiar with and observing the main principles of the French Republic, placing his or her children in school, undertaking occupational training and becoming involved in the life of the local community. The mayor of the municipality in which the foreign national lives may be consulted on this last point. Applicants for residence permits can be asked to sign an 'integration contract'. The aim of the measure is to combat all forms

35. Currently Articles 621-1 to 621-3 of the Code of foreigners' entry into and residence in France and asylum right.



of community-based narrow-mindedness by encouraging vulnerable groups of people, particularly women in certain communities, to commit themselves to such a process [of integration].”

Family reunification and verification of cohabitation for two years (Article 42(6))

“If cohabitation ceases before permission to reside has been granted, you must refuse to issue the permit. However, the Act creates the possibility of granting renewal of a residence permit for the spouse of a foreign national who, due to marital violence, can no longer meet the cohabitation requirement. Difficult situations of that kind must be considered in the light of the available documentary evidence. You must take particular account, while still giving careful consideration to each case, of information supplied by associations that work with foreign nationals, particularly women. This measure is to have immediate effect.”

Role of civil authorities and the authenticity of marital intent

The provisions of the Civil Code in relation to marriage have been amended. In the case of marriages celebrated in France, Article 74 of the 2003 Act has added a requirement to Article 63 of the Civil Code that civil authorities interview intending spouses before any marriage is celebrated. The purpose of the interview is to check well before the marriage ceremony that the couple's marital intent is genuine. The intending spouses may be interviewed separately or together. Where they are unable to attend such an interview, or where it is clear from documents submitted that their marital intent is not

in doubt, the interview can be dispensed with.

Role of the public prosecution service, mayors and chief county administrative officers (“préfets”)

Article 76 of the 2003 Act amends Article 175-2 of the Civil Code, on procedure open to civil authorities and the public prosecution service for opposing suspected marriages of convenience in France.

The principle still holds that the civil authority may report to the public prosecution service any cases where marital intent is suspect. That an intending spouse is in breach of the law on residence requirements is not an automatic reason for notifying the service. Nonetheless the Constitutional Council has clearly taken the view that the fact of unlawful residence may, in conjunction with other aspects of a case, be regarded as indicative that a marriage may be one of convenience. This means it is a factor that can be taken into account in decisions at municipal level. Chief county administrative officers will support all relevant action taken in cases where marital intent is in doubt.

Where a case is referred to it the public prosecution service has 15 days in which either to let the marriage go ahead or conduct a fuller investigation and therefore postpone the marriage. The service's interim decision and the reasons for it must be communicated to the civil authority and the parties concerned, as must the final decision after investigation. The time allowed for the investigation is one month, with a possible extension of a further month.

Mixed marriages celebrated outside France

Article 75 of the 2003 Act amends Article 170 of the Civil Code, introducing a requirement (modelled on that contained in Article 63 of the code as amended by the same Act) that intending spouses present themselves at least once at the French embassy or consulate, where they may be interviewed together or separately: they may do so when they apply to have the marriage banns published, when the French national receives his or her certificate of marital capacity (not the marriage certificate), or when the marriage is entered in the civil register.

New offence of marriage of convenience (Article 31)

“Each time you encounter a suspected case of marriage of convenience, you must ensure that you inform the public prosecution service so that an inquiry can be conducted with a view to possible prosecution on the basis of the new Article 21 quater. I would remind you that neither a criminal conviction for this offence nor annulment of the marriage on the basis of Article 146 of the Civil Code is a prerequisite for your refusing to issue or renew a residence permit for the foreign spouse of a French national if it is established that the rules have been broken.” The Conseil d'État ruled in its opinion of 9 October 1992 (Abihilali) that if the rules had clearly been broken to gain benefit of public-law provision, the administrative authorities had a responsibility to prevent that outcome even where the breach of rules took the form of a private-law transaction.

7. Policies and approaches

Under anti-discrimination legislation passed on 16 November 2001, telephone help lines for victims of racial discrimination were set up in each département. In cooperation with the courts and bodies already working to combat discrimination, a victim support scheme was also set up at département level. People who have been forced into marriage can report their problems through this system. The anti-discrimination services are

bound by professional confidentiality.

Provisions whereby victims are entitled to receive information from police officers and to obtain legal assistance were included in the Framework Justice Act (“Perben Act”) passed on 9 September 2002. Under Section VIII of the Act (“Aid to Victims”) victims have a right to be informed (see Articles 63 and 64). Police officers are required to use all means at their disposal to inform vic-

tims of their rights with regard to applying for compensation and taking civil action. If criminal proceedings have been initiated – and either a presumed perpetrator has been charged in court or a case has been referred for criminal investigation – the victim must be notified of the possibilities of legal representation and protection, of the option of receiving help from a local authority service or an accredited victim-support association and of the possibility



of applying to the Criminal Injuries Compensation Committee (CIVI). Under Article 65 of the Act, the victim's entitlement to legal aid is no longer subject to means testing.

A duty on schools to report cases of sexual violence was introduced by an official instruction on the subject (Instruction 97-175 of 26 August 1997 to chief education officers, heads of county education services and school principals).

The département of Seine Saint-Denis organised a special training course ("Preventing the practice of forced marriage: an initial training course for social services staff who work with schoolchildren"). Designed jointly by the county council, the education service and the Délégation aux Droits de la Femme et à l'Égalité [Women's Rights and Equality Committee] of the Ile-de-France Region, the course programme was published in 2002 as "Forced marriages – cultural aspects and legal remedies".

Voix d'Elles-Rebelles, an association based at Cité Gabriel Péri, 1 Place Lautréamont in Saint-Denis (93200), sets up projects aimed at preventing forced marriages, organises information sessions about women's rights, family codes in immigrants' countries of origin and different religions, and offers a psychological support service run by five volunteer therapists.

A film entitled *Forced marriage* was made. It showed an extract from a play written and acted by girls studying health and social care at Sabatier Vocational High School in Bobigny (Seine Saint-Denis), and included interviews with people working in the field. Since 1998 the film has been used on training courses for both school students and social workers.

A project on prevention of forced marriages was undertaken at Eugène Delacroix Vocational High School in Drancy, Seine-Saint-Denis – an area officially classed as "sensitive". The project was assisted by the association GAMS and included a showing of *Forced marriage*, followed by a discussion between members of GAMS and the 150 students who took part.³⁶

Under Article 2270-1 of the Civil Code, actions for non-contractual civil liability are barred when ten years have elapsed since the injury or

its aggravation became apparent. Act 98-468 of 17 June 1998 lays down an exception to this rule by extending the time limit to 20 years if the injury was caused by torture of, barbarity towards or assault or sexual assault on a minor.

GAMS – the Groupe des Femmes pour l'Abolition des Mutilations Sexuelles [Women's Group for the Abolition of Genital Mutilation and other Traditional Practices Affecting the Health of Women and Children] – which is the French section of the Inter-African Committee (based at 66 Rue des Grands-Champs, Paris 20), works to support the women concerned and to raise awareness. It is an officially registered association whose members are African and French women with expertise in health, social work and education, and a wealth of experience in the area of prevention. GAMS is financed by the Women's Rights Service and the Social Action Fund. Set up in Paris in 1982, it is recognised as the French section of the Inter-African Committee (IAC). The IAC has four groups or sections in Europe.

"Ni Putes, Ni Soumises" ["Neither whores nor slaves"] is a working-class movement that developed out of the Women's March against Ghettoes and for Equality which took place across France from 1 February to 8 March 2003. Chaired by Fadéla Amara, the movement works through 51 local committees with a view to responding more effectively to needs at grass-roots level. (e-mail: info@niputesnisomises.com)

The ASFAD, an association that grew out of the International Network for Solidarity with Algerian Women (RISFA), set up on 5 July 1995, is an advice and guidance centre for women of North African origin who find themselves in difficulty: it offers support with administrative and legal procedures and provides information, in particular with regard to forced marriages. (e-mail: asfad@free.fr)

36. See Caroline Durand, "Prévention des mariages forcés : que retiennent les lycéen(ne)s des actions de prévention sur les pratique des mariages forcés conduites au sein d'établissements scolaires?", post-graduate dissertation, op. cit.

Elele, an officially registered association was set up to promote integration of Turkish communities in France. Active in Ile-de-France and other regions, it is involved in a range of activities: running social advice centres, handling legal cases relating to the law on foreign nationals, organising training and awareness-raising, taking part in national and international events, running information sessions for Turkish workers and their families, educational and cultural activities, and research. The association encounters many cases of forced marriage. (e-mail: contact@elele.info)

"Voix de Femmes"³⁷ is a non-profit association (under the law of 1901), which was set up in 1998 and aims to assist anyone faced with the problem of forced marriage.

It has two objectives:

- offering counselling and support services for victims,
- awareness-raising, information services and training in prevention of forced marriage.

The association targets persons directly concerned by a forced marriage, that is to say the victims, whether minors or adults, and members of their family, school or cultural circle, as well as public opinion and agencies, that is to say professionals and social workers active in both the public and the voluntary sectors who are likely to come into contact with persons who are victims of or threatened with forced marriage.

Young women forced into marriage are stigmatised on both counts, as women and members of a given immigrant community, and accordingly suffer twofold discrimination. "Voix de femmes" runs the following activities in an attempt to counter this dual discrimination:

- an intercultural information, documentation and resource centre.

The association offers the public tools (legislation, sociological papers, documentaries, feature films in the original language version, plays, etc.) for understanding the specificities of the custom of forced marriage. The aim is to avoid the cultural relativism

37. Maison de Quartier des Linande, Place des Linandes beiges, F 95000 CERGY, tel.: (+33) 01 30 31 55 76, fax: +3301 30 32 84 67, voixdefemmes@wanadoo.fr



and stigmatisation that lead to discrimination based on gender and possibly religious background;

- awareness-raising, information and training activities.

The association participates in or organises information, awareness-raising and training activities at the request of agencies and public bodies or on its own initiative. These activities are pursued in co-operation with voluntary and public sector partners in a number of project areas: organisation of debates in schools and social centres, training courses for social workers, and so on;

- reception and counselling services.

Persons who contact the association emphasise the importance of being able to find a sympathetic ear within an organisation which deals solely with victims of forced marriage, which they may visit as often as necessary in order to come to a decision, whatever it may be. Voix de Femmes is indeed the only association in France with the specific aim of combating forced marriage, but it must be pointed out that other associations (Elélé, GAMS, AFAVO and SAFIA, for instance) have been active

in countering this practice for many years now;

- support and assistance activities.

The focus is on both prevention and remedies. The association assists young women in fear of being forced into marriage and also those who are already victims and wish to end the violence they suffer and lead an independent life. Voix de Femmes supports and/or assists them in the administrative, legal and social fields with applications for annulment or divorce, provides assistance in finding emergency or temporary accommodation and sets up family mediation arrangements.

Germany

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters. Germany adopted the Convention on 9 July 1969.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into

force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 10 July 1985 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 6 March 1992 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement

and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1 January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

The main source of current German private international law is the Introductory Act to the German Civil Code (EGBGB). Its original version, promulgated in 1896, is still in force. It incorporates the Federal Act of 25 July 1986, introducing codification of private international law,³⁸ as well as amendments passed in 1999.

With regard to marriages celebrated in Germany, it is a formal requirement under Article 13(3), first sentence, of the EGBGB that a civil authority should officiate, as a matter of public policy. The only exception is marriage of foreign nationals celebrated by an agency authorised to do

so by the state of which one of the intending spouses is a national. A purely religious marriage is deemed to be *matrimonium non existens*. With regard to marriages celebrated outside Germany, the formal requirements are those of either the *lex loci actus* or the *lex causae*. Thus, Article 11(1) EGBGB applies. Religious marriage has effect in civil law if it is authorised by the law of the place of celebration

With regard to substantive requirements, the validity of marriage is governed by the national law of the intending spouses. When they are of different nationalities, the two sets of national legal provisions are applied distributively (Article 13(1) EGBGB).

On the basis of the guarantee of freedom to contract marriage contained in Article 6(1) of the German Basic Law [constitution], Article 13(2) EGBGB stipulates that German law

replaces the national law of the intending husband or wife when the following three requirements are met:

- one of the intending spouses is of German nationality or resides habitually in Germany;
- the intending spouses have taken all the steps they might reasonably be expected to take with a view to removing an impediment to the marriage;
- refusal to celebrate the marriage is incompatible with the freedom to contract marriage.

The application of foreign law in Germany can be refused if it is contrary to German public policy (*ordre public*). For the same reason a marriage contracted abroad can be regarded as void by German public authorities.

38. Federal Act of 25 July 1986; for commentary see Rev. crit. DIP, 1987, p. 1 et seq. See also, in the same publication, articles by F. Sturm, "Personnes, familles et successions dans la loi du 25 juillet 1986 portant réforme du droit international allemand", and J. Basedow, "Les conflits de juridictions dans la réforme du droit international privé allemand".



3. Provisions in civil law

A distinction is made in German law between legal personality and legal capacity. Legal personality consists in having rights and obligations while legal capacity means capacity to enter into legal agreements. Legal capacity may be limited or full. Full capacity is acquired at 18 years of age.

Article 6(1) of the German Basic Law enshrines the fundamental right to marry, consisting in unimpeded access to marriage and the right to marry the partner of one's choice.

German family law was reformed in 1975.

3.1. Marital capacity

Under the Civil Code, marriageable age is 18 years, the age of legal majority (Civil Code [BGB] Section 2, 1303-1).

Exceptionally, the family court may authorise a marriage if one of the parties to it is of legal age and the other is in his or her sixteenth year (Section 1303-2 BGB). In no event

may males or females marry before they reach the age of 16.

A minor's representative may refuse to allow a marriage only with good reason, and if it is so, there cannot be a court ruling in place of the representative's consent.

3.2. Consent

It is an absolute condition for the validity of a marriage that the intending spouses should consent to it freely and voluntarily.

Error, deception and unlawful threat are deemed to vitiate consent. The generally accepted definition of threat is "the prospect of harm willed by the person making the threat". The threat must be such as to put the person declaring consent under psychological duress. In cases of irresistible physical duress, no declaration of consent is deemed possible.

3.3. Celebration of marriage

For a marriage to be valid, both parties must be present in person

when it is celebrated, along with two witnesses. They must declare, in the presence of the civil authority, their intent to be bound to one another. Religious marriage may be celebrated after civil marriage.

3.4. Annulment of marriage

A marriage is liable to be annulled under the conditions laid down in Section 1314 BGB.

A marriage can be annulled only by a judgement of the court (Section 1313 BGB).

According to the conditions laid down in Section 1315 BGB, an annulment is not possible even if the marriage does not meet the necessary legal requirements. For example: if one spouse had not reached the age of 18 years and the marriage had not been authorised by the court, the marriage cannot be annulled if the spouse declares his or her intention to continue the union after he/she reached the age of 18.

4. Protection measures

Under Section 1666(1) of the Civil Code the court must take necessary measures if a child's physical, psychological or mental wellbeing or integrity are threatened by abusive treatment on the part of a parent, by neglect or lack of care or by the behaviour of a third party where the child's parents are not able or willing to remove the danger.

If the families involved in such cases are foreign nationals living in Germany, the courts are also supposed to act in a way that takes account of the attitudes and values of the relevant foreign cultural and legal systems.³⁹ This implies concessions with regard, for example, to forms of communication and reasons for certain behaviour. A teenage Turkish girl, for instance, will be more submissive to her parents than a young German girl would be in matters of dress and conduct. In the eyes of German parents, foreign parents'

reactions might appear excessive.⁴⁰ There is no justification, however, for forms of duress affecting substantive legal rights – including specifically coercion to bring about a marriage to which the child is opposed.⁴¹

In cases where parents seek to marry a child against his or her wishes, the family court must take the necessary measures to avert the danger, as provided in Section 1666(1) of the Civil Code. Measures available under this provision range from injunctions and prohibition orders to the complete or partial withdrawal of custody. Under Section 1666a(2) of the Civil Code, custody of the child may be withdrawn completely if other measures have failed or if they are deemed insufficient to eliminate the risk. In order to give children effective protection from marriage, it is necessary in many cases to withdraw parental rights and

to separate the child from the family, at least temporarily.

The family court can act on its own authority in taking such measures under Sections 1666 and 1666a. Consequently, it may make an appropriate order without having received any formal request for it, where it has been alerted by, for instance, friends, neighbours or a child protection agency. If urgent intervention is needed – for example, if a child is about to leave to be married – the court may issue injunctions under Section 1666 to ensure the child's safety and protection.

The Protection of Victims of Violence (Improvement) Act of 14 December 2000 empowers the civil courts, in response to applications from persons who have suffered physical violence, to take whatever measures may prevent their repetition, and in particular to bar an aggressor from the home of the victim, from places that the victim frequents and from making contact with the victim.

39. See Staudinger/ Coester, BGB, 13th edition 2000, section 1666, paragraph 144, FLG Berlin FamRZ 1983, 943.

40. See Staudinger/ Coester, *ibid.*

41. See Staudinger/ Coester, *ibid.*, paragraph 145, OLG Cologne, NJW-RR-2001, 221.



5. Provisions in criminal law

5.1. Classification of forced marriage

Since 19 February 2005 forced marriage is mentioned under section 240 (4) of the Criminal Code as an especially serious case of coercion. For this provision to apply, the victim must have been unlawfully forced to marry through the use of violence or threat. Serious cases of coercion are punishable by imprisonment from six months to five years.

Depending on the circumstances in individual cases, there may be further charges of wounding (Section 223 of the Criminal Code), false imprisonment (Section 239), sexual coercion or rape (Section 177), trafficking in human beings for the purpose of sexual exploitation (Section 232).

Since July 1997, the Criminal Code has included a provision punishing rape within marriage.

5.2. Prosecutions in cases of forced marriage

Under German law, prosecutions for offences involving domestic violence are brought by the state through the public prosecution service. The public prosecution service takes action as soon as an offence comes to light, irrespective of the wishes of the victim.

The principle whereby the state initiates proceedings without regard to the victim's wishes is not absolute, however, particularly as, with some offences, prosecution depends on the victim making a complaint. In such cases, although the public prosecu-

tion service cannot institute proceedings until the victim makes a complaint, it can begin an investigation on its own initiative and indeed can place a suspect in preventive detention in order to ensure that he or she does not abscond and evidence does not go missing. For example, in case of bodily injury, (Section 223), victim must make a complaint. Where an assault is suspected, however, the public prosecution service may act on its own initiative if it considers it is in the public interest to do so. In case of serious bodily injury (Section 226) or dangerous bodily injury (Section 224), a victim's complaint is not required.

6. Provisions of the law on foreign nationals

The Residence Act of 30 July 2004, which came into force on 1 January 2005, introduced numerous amendments to the legislation on foreign nationals. In particular it changed the rules for family reunification, which was previously governed by the 1990 Aliens Act.

Because Acts of Parliament simply lay down general rules which it is the task of the *Länder* [federal states] to implement, administrative guidelines of the federal government seek to ensure uniform interpretation. The guidelines on implementing the Residence Act have not yet been adopted.

The Residence Act establishes the principle of family reunification based on the constitutional protection afforded to marriage and the family. The foreign spouse of a foreign national is entitled to be granted a residence permit if the foreign national either:

- holds a residence permit (*Niederlassungserlaubnis*);
- has held a residence permit (*Aufenthaltserlaubnis*) for five years, or;
- was married when the residence permit was granted and intends to live there for at least a further year.

If the foreign national holds a residence permit and the foreign spouse is not entitled to be granted a resi-

dence permit, it may be granted to the spouse at the discretion of the authorities.

The residence permit can be refused to the spouse or another member of the family if they depend on social allowances. According to administrative guidelines the spouse is granted a one-year residence permit which, after one year, is renewable every two years. For the first four years, the permit cannot be valid for longer than the permit held by the foreign national who made the reunification application. After five years a permit of unlimited duration may be granted once the general conditions for the grant of a permanent residence permit have been met.

In the event of termination of marital cohabitation the spouse has an independent right of residence, if the spouses have cohabited in Germany for at least two years, or if this is necessary to avoid particular hardship, for example, because the continuation of marital cohabitation or the return to the country of origin would be unreasonable. In case of death of the foreign national, the independent right of residence is granted immediately. Administrative guidelines presume such a hardship in the case of women who were ill-treated or deprived of their liberty by their husband or who would suffer considera-

ble social discrimination in their country of origin as a consequence of the dissolution of their marriage.

For family reunification to German nationals, fewer conditions have to be fulfilled by the foreign spouse in order to receive a residence permit or a permit of unlimited duration.

Regarding EU nationals, the relevant regulations of EU law do apply.

The Nationality Act 1913, as amended in 2005, provides that foreign spouses of German nationals are granted German nationality through naturalisation if they make the appropriate application and fulfil certain conditions in relation to morality and integration.

Naturalisation in the case of spouses of German citizens constitutes a right.

The reform of the nationality law which came into force on 1 January 2000 provides for an entitlement to naturalisation for foreign nationals who have lawfully had their habitual residence in Germany for eight years. If a foreign national is entitled to naturalisation, his or her spouse may also be naturalised at the same time after a shorter period of lawful residence. Any naturalisation requires that the applicant holds a valid residence permit, observes the constitutional values of the Basic Law, has not



been convicted of a criminal offence, has a home, is integrated into the national community and able to speak German, and is capable of meeting his or her needs and those of the family.

Naturalisation is subject to renunciation of one's original nationality.

The original nationality may be retained, however, if renunciation is impossible or particularly difficult under the legislation of the country of origin.

Applications for naturalisation are submitted to the administrative authorities, which check that the

applicant fulfils the requirements. Additional investigation may be carried out. If it is refused, however, the applicant has the option of appeal to the administrative courts.

7. Policies and approaches

Victims of marital violence are entitled to compensation under the Victim Compensation Act of 7 January 1985. The amount of compensation is determined under the provisions of the Federal Assistance Act, the law which is the basis for compensation of war victims.

It provides for financial support to cover the cost of necessary medical treatment.

The compensation is paid out by the *Land* in which the violence took

place or that where the victim resides. Central government meets 40% of the resulting cost to the *Länder*. The *Land* is empowered to recover the amounts involved from the party responsible in civil law.

Germany has a well developed network of sheltered accommodation and many support facilities, notably advice centres and telephone help lines.

Applying experience gained in Berlin between 1995 and 1999, the

federal authorities are keen to improve cooperation between all the agencies involved in combating forced marriages. They are working to raise police awareness of the problem by means of training and rationalisation of police methods in the relevant areas.

The federal government also wants to see help measures introduced for aggressors.

Hungary

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters. Hungary adopted the Convention on 5 November 1975.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into

force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 22 December 1980 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 8 October and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable

Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1 January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities in respect of the Protection of Minors. It was signed on 4 July 2005.

2. Provisions in private international law

3. Provisions in civil law

Article 15 of the constitution provides that the Republic of Hungary protects the institutions of marriage and the family. Particular importance is attached to the safety and upbringing of young people and protecting their interests. Under Article 66 of the constitution, also, men and women are equal in all civil, political, economic, social and cultural rights.

The Family Act (Act 4, 1952, which has undergone a number of amend-

ments) lays down formal prerequisites for marriage.

3.1. Marital capacity

Marriage partners must be adult (i.e. aged 18 or over, or, exceptionally and with the authorisation of a court, aged 16 or over).

3.2. Consent

Marriage requires the declared mutual consent of the partners.

3.3. Celebration of marriage

The Act also requires that both partners should be present in the marriage registry office for celebration of the marriage.

3.4. Annulment of marriage

A marriage is not valid if one of the partners was in a state of incapacity when it took place.

4. Protection measures

Particular attention is paid in Hungarian law and policies to the protec-

tion of children's rights and the prevention of violence and child abuse.

The Criminal Code provides for heavier penalties to be imposed where



offences such as rape (Section 197) or indecency (Section 198 *et seq.*) are committed against children.

However it also lays down certain offences that are punishable specifically in the interests of protecting child victims, namely placing a minor in danger (Section 195), seduction (Article 202) and pornography (Article 195(a)).

Chapter 14 of the code, on crimes against the family, youth or sexual morality, includes the following provisions on placing a minor in danger (Section 195):

(1) a person who has a duty to bring up, supervise or care for a minor and who seriously breaches his obligations [...], thus endangering the minor's physical, intellectual or moral development, is guilty of an offence and liable to imprisonment for between one and five years;

(2) except where a more serious offence has been committed, an adult who induces a minor to commit an

offence, or attempts to do so or to corrupt the minor, is punishable in accordance with sub-section (1).

The section of the code on seduction (Section 201) includes the following:

(1) a person who has sexual relations with someone under 14 years of age, or a person over 18 years of age who engages in fornication with a person under 14 years of age is guilty of an offence and liable to imprisonment for between one and five years;

(2) a person over 18 years of age who attempts to induce someone under 14 years of age to have sexual relations or engage in fornication with him is guilty of an offence and liable to imprisonment for up to three years;

(3) the penalties are respectively two to eight years' imprisonment and one to five years' imprisonment if the party injured by the offences referred to in sub-sections (1) and (2) is a member of the family of the perpetrator

or is being raised, supervised, cared for or treated medically by the perpetrator.

Section 202 of the code provides:

(1) a person who induces someone under 14 years of age to have sexual relations or engage in fornication with a third person is guilty of an offence and liable to imprisonment for between one and five years;

(2) a person over 18 years of age who attempts to induce someone under 14 years of age to have sexual relations or engage in fornication with a third person is guilty of an offence and liable to imprisonment for up to three years;

(3) the penalties are respectively two to eight years' imprisonment and one to five years' imprisonment if the party injured by the offences referred to in sub-sections (1) and (2) is a member of the family of the perpetrator or is being raised, supervised, cared for or treated medically by the perpetrator.

5. Provisions in criminal law

5.1. Classification of forced marriages

Although there is no specific criminal offence of forced marriage, Hungarian law does have certain offences relevant to forced marriage.

Prosecutions can be brought for offences including threatening behaviour within the meaning of Article 174 on constraint ("A person who forces another by means of violence to commit, refrain from or be subjected to an act and who thus occasions significant harm is guilty of an offence and – unless another offence is involved – is liable to imprisonment for up to three years.")

There are a number of provisions in the Criminal Code in relation to violent offences against family members or children. They provide a basis for prosecution and punishment of sex offences and/or the abuse of women or children. Since the Criminal Code was amended in 1997, rape or sexual assault committed within marriage are criminal offences.

To summarise, Hungarian criminal law contains no specific provisions punishing forced marriage as an offence *sui generis*. Forced marriage may, however, involve constraint or various other offences against, in par-

ticular, life, the person or sexual freedom).

With regard to rape, Chapter 14 of the code, on crimes against the family, youth or sexual morality (Section 197), includes the following provisions:

- anyone who, by means of violence or direct threat to the life or body of another, forces that person to engage in sexual relations or who takes advantage of another's inability to defend themselves or indicate willingness or otherwise to engage in sexual relations, is guilty of an offence and is liable to imprisonment for between two and eight years;
- the penalty is imprisonment for between five and ten years if:
 - the victim is less than 12 years old;
 - the victim is being raised, supervised, cared for or treated medically by the perpetrator;
 - there is more than one perpetrator;
- the penalty is imprisonment for between five and 15 years if the provisions of sub-section (2) (b) or (c) apply and the rape is committed against a person under 12 years of age.

With regard to indecency (Section 1998):

- anyone who, by means of violence or direct threat to the life or body of another, forces that person to engage in fornication or who takes advantage of another's inability to defend themselves or indicate willingness or otherwise to engage in sexual relations, is guilty of an offence and liable to imprisonment for between two and five years;
- the penalty is imprisonment for between five and ten years if:
 - the victim is under 12 years of age;
 - the victim is being raised, supervised, cared for or treated medically by the perpetrator;
 - a number of persons fornicate with the victim on the same occasion and in the knowledge of one another's actions;
- the penalty is imprisonment for between five and 15 years if the provisions of sub-section (2) (b) or (c) apply and the sexual assault is committed against a person under 12 years of age.

A further interpretative provision is relevant, namely that:



- a person under 12 is deemed incapable of self-defence for the purposes of Sections 197 and 198.

Under Chapter XII, "Crimes against persons", Title II(I), "Crimes against personal freedom and human dignity", infringement of personal freedom is an offence (Section 175):

(1) anyone who deprives another of personal freedom is guilty of an offence and liable to imprisonment for up to three years;

(2) anyone who acquires another person through human trafficking and subjects them to continued deprivation of personal freedom by putting

them to forced work is guilty of an offence and liable to imprisonment for between two and eight years.

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

7. Policies and approaches

Ireland

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into

force on 3 September 1981 in accordance with the provisions of Article 27. Ireland adopted the convention on 23 December 1985.

- The 1989 United Nations Convention on the Rights of the Child was signed on 28 September 1992 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable

Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1 January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

3. Provisions in civil law

Engagement, which is widely practised in Ireland, is not a contract containing an obligation to marry.

3.1. Marital capacity

Eighteen is the legal age for marriage in Ireland, but an Act of 1995 provides that a marriage of a person below this age can be permitted by a civil court.

3.2. Consent

While coercion or violence are not specifically mentioned in any marriage legislation as factors which vitiate a marriage contract the courts have consistently ruled that violence or coercion before a marriage would render such a marriage void.

3.3. Celebration of marriage

Civil marriage can be celebrated in the office of the civil authority responsible for marriages.

Marriage may also be celebrated before religious authorities but the civil authority must receive notice of

the marriage at least three months before it takes place (unless a court has granted an exemption from this three-month notification requirement). At present there is no requirement to verify that couples meet the conditions for marriage, it is simply necessary to forward to the civil authority the certificate supplied by the minister of religion.

New legislation (see below) which is expected to come into effect in 2006 will require those undergoing religious marriages to provide the same documentation to the civil authorities prior to the marriage, as those undergoing civil marriages.

Civil marriage law requires the couple to fulfil certain residency requirements (either 7 days for a certificate or 15 days for a licence). Immediately following completion of the residency period the couple must present themselves in person to the Registrar and submit identity papers such as passport and/or birth certificate. A waiting period of either 22

days or 8 days follows depending on whether marriage is by certificate or licence.

In addition, the Family Law Act 1995 requires under:

- Section 31 that the minimum age at which a person, ordinarily resident in the State, may contract a marriage valid in Irish law be eighteen years of age; whether the marriage takes place in Ireland or elsewhere, subject to 3.1 above;
- Section 32 that any couple intending to marry in Ireland must give at least 3 months notice of such marriage in writing to the Registrar of the district in which the marriage is to be solemnised.

Ireland does not permit proxy marriage, two witnesses and both parties must be present.

3.4. Annulment of marriage

The High Court and the Circuit Court can grant decrees of nullity.



4. Protection measures

A range of protection measures are available in Irish law, in particular under the Domestic Violence Act,

1996 and the Domestic Violence Act (Amendment), 2002. These Acts pro-

vide for the granting of Safety, Protection and Barring Orders.

5. Provisions in criminal law

Comprehensive legislative measures have been put in place which combat violence against women and criminalise such activity.

- the Domestic Violence Act, 1996 and the Domestic Violence (Amendment) Act, 2002;
- the Criminal Law (Rape) Act, 1981 and the Criminal Law (Rape) (Amendment) Act, 1990 (criminalises rape within marriage);
- the Sex Offenders Act, 2001;

- the Non-fatal Offences Against the Person Act, 1997 (creates the offence of harassment).

5.1. Classification of forced marriage

There is no specific offence of forced marriage.

5.2. Prosecutions in cases of forced marriage

Section 5 of the Criminal Law (Rape) (Amendment) Act, 1990 abol-

ished any rule of law by virtue of which a husband cannot be guilty of the rape of his wife.

Proceedings in serious crimes such as rape are instituted on behalf of the State by the Director of Public Prosecutions.

6. Provisions of the law on foreign nationals

7. Policies and approaches

The Gardaí (police force) have put in place measures in relation to the investigation of crimes of domestic violence and sexual violence, in particular the establishment of a Domestic Violence and Sexual Assault Investigation Unit and the development of a written pro-arrest policy in relation

to domestic violence intervention, which is currently being reviewed and updated.

Ireland is currently working on a National Women's Strategy to be published this year and a strategic plan for the National Steering Committee on Violence against Women which

will integrate a human rights approach into policies on advancing gender equality in Ireland.

The marriage laws are currently being updated under the Civil Registration Act 2004. It is expected that this will be enacted in 2006.

Italy

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters, was signed on 20 December 1963.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into

force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 10 June 1985 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 5 September 1991 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement

and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1 January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

Articles 115 and 116 of the Civil Code:

- Article 115: An Italian citizen who wishes to contract a marriage abroad must observe all the provisions in relation to marriage including those concerning minority;
- Article 116: A foreign national who wishes to contract a marriage in Italy must produce a statement

from the competent authority in his or her own country certifying that there is no impediment to the marriage. The foreign national must comply with the provisions of the Italian Civil Code contained in Articles 85 (mental incapacity), 86 (he or she must not already be married), 87(1) (marriage prohibited between direct ascendants and descendants), 87(2) (marriage

prohibited between brothers and sisters), 87(4) (marriage prohibited between first cousins), 88 and 89.

This implies that foreign nationals wishing to contract a marriage in Italy are not subject to the rules on minority (Article 84) and that marriages between uncles or aunts and nieces or nephews, as between adoptive parents and their adopted chil-



dren, are not prohibited if permitted by the law of the foreign country.

Act 218 of 31 May 1995, which came into force on 1 September 1995, changed the position regarding the application of private international law. Setting in train a process of codification in this area of the law,⁴² it provided for new, and more plural and flexible, methods of deciding matters of jurisdiction. It retains the principle

42. Act of 31 May 1995, Rev. crit. DIP 1996, p. 1 et seq. See, in particular, the following two articles: T. Ballarino, "Personnes, familles, régimes matrimoniaux et successions dans la loi de réforme du droit international privé italien", and V. Starace, "Le champ de la juridiction selon la loi de réforme du système italien de droit international privé".

3. Provisions in civil law

Marital capacity, consent, the celebration of marriage and its annulment are governed by Articles 79 to 142 of the Italian Civil Code.

3.1. Marital capacity

Under Article 84, minors may not contract marriage. A judge sitting in chambers may – ruling on an application by the minor concerned and taking into account his or her physical and psychological maturity as well as the opinions of the public prosecution service and the minor's parents or guardians – permit the marriage of a person aged at least 17.

Article 85 contains a prohibition on grounds of mental illness. Persons who are mentally incapable may not contract marriage (if a court ruling on the question of mental incapacity is pending, the marriage celebration must be postponed until it has been delivered).

Article 87 concerns marriage and degrees of kinship. Marriages may not be contracted between direct ascendants and descendants, whether or not the descendants are legitimate; between full-blood brothers and sisters or brothers and sisters who share either the same mother or the same father; between aunts or uncles and nieces or nephews; with the spouses of direct ascendants or descendants, even where the previous marriage has been annulled, dissolved or declared to have no further effect in civil law; with the spouses of brothers or sisters, aunts or uncles; or

that there should be a choice of jurisdiction in many situations.

The requirements for marriage are governed by the national laws of the intending spouses, applied distributively.

As far as formal requirements are concerned the system is very liberal, with no restrictions of form regarding marriage of foreign nationals on Italian territory – so that, for example, a Muslim couple would be free to marry according to their own rite. Nor would they be subject to direct application of Article 116 of the Civil Code, because it presupposes a civil marriage celebration.

between adoptive parents and their adopted children or the latter's descendants or adopted children (although a legal exemption may be granted in such cases).

3.2. Consent

Consent must be free and deliberate.

It must also be real and unfeigned and must not be flawed by violence or deferential fear of an exceptionally serious kind (defined as a psychological perception of danger to one's person).

The right to oppose marriages is covered by Articles 102 to 105. The right may be exercised by parents or, in their absence, by other direct ascendants or relatives to the third degree of kinship, or by a guardian (the grounds for opposition being based on the legal requirements for the celebration of marriage). A marriage may also be opposed by the existing partner of a person who wishes to contract a new marriage.

Marriages contracted in breach of Article 89 (i.e., where there is failure to observe the statutory waiting period before remarriage) may also be opposed by the parents of the previous spouse, following the divorce.

Under Article 102(4), the public prosecution service is required to prevent marriages whenever it is aware of an impediment, a mental infirmity or a problem with regard to the age of one of the spouses-to-be.

The 1995 Act stipulates that international agreements take precedence over domestic law. With regard to the application of foreign law by Italian courts, it introduces the principle that the court is to identify the relevant provisions in the foreign legal system. It may do this by

- using the arrangements available under international conventions;
- requesting information from the Ministry of Justice;
- using the services of experts or specialist institutions.

In all cases, application of the foreign law must not conflict with Italian public policy.

3.3. Celebration of marriage

The rules on religious marriage are contained in Chapter II "Marriage celebrated before a priest of the Catholic Church and marriage celebrated before a minister of religion of a denomination recognised by the state." Religious marriage is subject to rules set out in the relevant concordat. Marriages celebrated before a minister of religion of another denomination recognised by the Italian state must comply with the rules of the Civil Code except where provisions to the contrary exist in a special statute (Articles 82 and 83).

The Concordat of 1929 recognises the effect in civil law of unions contracted by religious marriage where the marriage is entered in the municipal register. Immediately following the religious ceremony the officiating cleric will explain to the spouses the civil effects of marriage, reading out the articles of the Civil Code that concern marital rights and duties. Annulments by ecclesiastical courts have civil force subject to an appeal court judgment (Article 8(2) of the Concordat, ratified by Italy in Act 121 of 25 March 1985, provides that a judgment of the ecclesiastical courts annulling a marriage, when rendered enforceable by the superior ecclesiastical review body, can be made enforceable in Italy by the relevant court of appeal on an application by one of the parties. However, the European Court of Human Rights, in its judgment in the case of *Pellegrini v. Italy*,



found there had been a violation of Article 6(1) (right to a fair hearing) of the European Convention on Human Rights, in that the Italian courts had failed to ensure that the applicant had had a fair hearing in a dispute about civil rights and obligations. The applicant argued that her right of defence had been irremediably compromised when she was called to appear before an ecclesiastical court (she had not been informed of the identity of the person applying for the annulment or of the grounds on which it was sought).

Articles 106 to 114 deal with various aspects of marriage including the place of celebration (Article 106); formal procedure and the giving of the spouses' consent in the presence of witnesses (Article 107); prohibition of marriage in certain circumstances (Article 108); and the use of proxies (Article 109).

The law provides that a civil authority may refuse to celebrate a marriage (or to issue a notice of marriage) for a number of reasons, notably failure to observe the necessary requirements or the formalities with regard to notice and form of celebration. The civil authority must give reasons for its decision and the decision may be appealed to a judge sitting in chambers (Article 112).

4. Protection measures

The Family Violence Act (Law 154 of 4 April 2001), in conjunction with Act 304/2003, contains a number of relevant provisions:

- removal from the family home (Article 1);
- measures to protect against abuse within the family (Article 2) – introducing a number of new provisions (Title IX bis) under Title IX, Book I of the Civil Code;

The court may grant protection order against abuse within the family (Article 342 bis).

5. Provisions in criminal law

5.1. Classification of forced marriage

There is no specific offence of forced marriage but various provisions on violence and other offences

3.4. Annulment of marriage

In the case of marriages contracted in breach of Article 84 (on minority), an action for annulment may be brought by either parent of the spouse concerned or by the public prosecution service (and a person who was a minor at the time of contracting a marriage can apply for its annulment up to one year after reaching the age of majority).

The same parties may seek annulment of marriages contracted in breach of Articles 86 (freedom from marital commitment), 87 (kinship) and 88 (homicide), but in these cases entitlement to take proceedings is extended to anyone with a legitimate and current interest in doing so.

Violence, grave fear and flawed consent are grounds for annulment.

A person who has been married by force is therefore required to prove that he or she was afraid to disappoint others by not contracting the marriage.

Action for an annulment becomes barred if the spouses have cohabited for a year since the occasion of the fear.

Civil marriages will be declared null by an Italian civil court on grounds provided for in civil law. Annulment of a marriage governed by the provisions of the concordat requires two decisions: firstly by an ecclesiastical court, declaring the

marriage null on grounds provided for in canon law, and secondly by an Italian civil court, enforcing the ecclesiastical court judgment.

The civil-law rules on annulment of marriage do not make the customary distinction between nullity and invalidation. There are several different types of nullity, however:

- absolute nullity (which may be invoked by anyone with a legitimate interest in doing so);
- relative nullity (which may be invoked only by the spouses and in some cases by a few specified persons);
- prohibitive nullity (if the spouses have cohabited for a certain period of time the marriage may no longer be contested);
- fatal nullity (where the fact of cohabitation by the spouses can never have the effect of preventing annulment).

Canon law recognises a wide range of grounds for annulment, particularly in relation to spousal consent, which must be free, deliberate and real. The grounds include lack of the necessary mental faculties, failure to observe basic requirements for marriage, violence and duress. Violence is understood to mean the use of force against a person for purposes of constraint, and duress is understood to mean constant fear or pressure which impels a person to marry.

When the conduct of a spouse or cohabitee causes serious physical or psychological harm to the other spouse or cohabitee or seriously infringes their freedom the court may, where the facts of the case do not automatically warrant criminal proceedings and on application by one of the parties, order that one or more the measures provided for in Article 342 ter be taken:

- intervention by social services, a family mediation agency or a recognised association whose role is

to protect victims of marital or domestic ill treatment;

- determination of an allowance, proportionate to any loss of income, to be paid to the spouse in charge of the family.

Court orders of this kind apply for a maximum of six months, but may then be extended on application by one of the parties, for serious reasons and for a strictly limited period.

against the person in a marital or family context offer possible grounds for prosecutions.

The Sexual Violence Act (Law 66 of 15 February 1996) repealed the

provisions of Title IX, Chapter I of the Criminal Code concerning offences against sexual freedom. One of the provisions that was repealed concerned marriage-related kidnapping.



The former Article 522 provided that anyone who, by means of violence or threat, concealed or held an unmarried woman for purposes of marriage was liable to imprisonment for one to three years. The cancellation of this provision is regrettable because it would have offered a direct means of penalising forced marriage without recourse to other provisions. Previously, sexual offences were classed as “offences against public morality” and more specifically against sexual freedom.

The new Criminal Code provisions have replaced the concept of rape, as such, by that of “sexual violence” – a generic term covering all forms of sexual assault.

There are no specific provisions in relation to rape of minors or other sexual acts against minors, the age of the victim being merely an aggravating circumstance. The same applies to a husband-wife relationship, and there is no specific offence of rape within marriage.

Article 605 of the Criminal Code concerns the offence of false imprisonment. Anyone who deprives another of his or her personal freedom is liable to imprisonment for between six months and eight years. The penalty increases to 10 years’ imprisonment if the offence is committed against an ascendant, descendant or spouse. This additional stipulation would allow prosecution either of parents, who may have falsely imprisoned their child prior to a marriage, or the new spouse.

Article 609 bis of the Criminal Code deals with sexual violence. Anyone who, by means of violence, threat or abuse of authority, forces another person to perform or undergo a sexual act is liable to imprisonment for between five and ten years. The same penalty applies to anyone who induces, or causes another person to undergo, such an act:

(1) by taking advantage of the victim’s physical or mental inferiority or

(2) by deceiving the victim by pretending to be someone else.

The length of the sentence may be reduced by up to two-thirds in less serious cases.

Article 609 *ter* lays down heavier penalties where there are aggravating circumstances. The term of imprisonment is between six and 12 years if the offences enumerated in Article 609 *bis* are committed:

- against minors under 14;
- with the use of a weapon, an alcoholic, narcotic or stupefying substance or any instrument or substance harmful to the health of the victim;
- by persons using a disguise or pretending to be public officials or employees of a public service;
- on an individual whose personal freedom is impeded;
- on a person who has not reached the age of 16 years and of whom the perpetrator is the ascendant, parent, adoptive parent or guardian.

The term of imprisonment is between seven and 14 years if the victim is under ten years of age.

Article 609 *quater* penalises sexual acts with a minor. Perpetrators in such cases are liable to the same penalties provided for in Article 609 *bis*. This provision applies where the perpetrator is guilty of a sexual act with a person who:

- was under 14 years of age;
- - was under 16 years of age, if the perpetrator is the ascendant, parent or guardian of the victim or otherwise responsible for his or her upbringing, education or supervision or, in the last-mentioned circumstances, was living with the victim.

Apart from the cases provided for in Article 609 *bis*, penalties do not apply to minors who have committed sexual acts with another minor aged 13 or over if there is an age difference of less than three years between the two.

Article 690 *quinquies* concerns the offence of corruption of a minor.

Anyone who performs a sexual act to exhibit himself to a child under 14 years of age is liable to imprisonment for between six months and three years.

Article 609 *sexies* concerns the possible defence of ignorance of a person’s age. If the victim in any of the situations described in the preceding articles is less than 14 years of age, there is no defence of ignorance of age.

Article 609 *septies* states that, in relation to the offences provided for in Articles 609 *bis*, *ter* and *quater*, the victim must lodge a complaint within six months and complaints once lodged may not be retracted.

Prosecution is automatic if:

- in the case of the offences described in Article 609 *bis*, the victim is under 14 years of age;
- the perpetrator is a parent, guardian or adoptive parent etc;
- the perpetrator is a public official;
- the perpetrator was living with the child victim, who was under his or her supervision.

These provisions on sexual assault provide a basis for prosecution in cases of forced marriage, i.e. once the marriage has been concluded. A husband may be prosecuted for sexual violence against his wife, but prosecution depends on the victim making a complaint.

Under Section III, concerning offences against moral freedom, Article 610 penalises acts of violence in private. Anyone who, through the use of violence or threat, forces another to do, tolerate or refrain from doing something, is liable to up to four years’ imprisonment.

Prosecution in cases of forced marriage is possible only if the spouse or the parents of the victim have committed one of the relevant offences. Otherwise, in the absence of any specific offence of forced marriage, there is no penalty for the practice under criminal law.

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

Family reunification is provided for in Legislative Decree 286 of 25 July 1998, which coordinates the pro-

visions of several other pieces of legislation, including the Immigration Act of 6 March 1998. A further order

of 31 August 1999 supplements the 1998 Act. Additional amendments were introduced by the Bossi-Fini



Act, which Parliament passed on 11 July 2002.

Family reunification is a right that may be exercised by foreign nationals holding a residence permit valid for at least one year in order to bring certain members of their families to Italy.

A spouse who is not separated is covered by the family reunification provisions if the foreign national making the application fulfils the following conditions:

- possession of a residence permit valid for at least one year;
- possession of accommodation that meets the standards for new public-authority housing;
- possession of an annual income from lawful sources at least equal to the minimum level of benefit payable to persons without resources who are incapable of working. This income requirement varies according to the number of persons for whom family reunification is sought.

A residence permit obtained under the family reunification procedure will be for the same duration as the permit of the foreign national who

made the application. It will be renewable after the same period of time.

The Nationality Act (Law 91 of 5 February 1992) provides that a foreign national or stateless person married to an Italian citizen may acquire nationality simply by applying for it after six months' residence in Italy or three years of marriage.

The provisions of the Nationality Act were the subject of implementing legislation in the form of Presidential Decree No. 573 of 12 October 1993.

Applicants for Italian nationality must not have been convicted of an offence against the security or authority of the state or the institutions of the Republic, and must not have been convicted of an offence carrying a penalty of three years' or more imprisonment or convicted by a foreign court of an offence recognised in Italy and punishable by more than a year's imprisonment. Applications are refused if there is risk to national security.

Acquisition of Italian nationality does not require renunciation of the person's original nationality.

A foreign national may apply for Italian nationality after six months' residence in Italy or after three years of marriage, provided that the spouses have not separated.

Applications are submitted to and processed by county administrative offices which forward them to the Ministry of the Interior.

Decisions to grant nationality are made in a decree of the Minister of the Interior. Applications may be refused only on grounds indicated in the legislation, notably a criminal record or risk to national security. In the second case, the decree rejecting the application is subject to approval by the Council of State.

Italian nationality is acquired definitively only if the applicant takes an oath of allegiance to the Republic within six months of receiving notice of the decision. The oath is taken in the presence of a civil authority of the municipality where the applicant lives.

If an application is refused, a fresh application may not be submitted within five years.

7. Policies and approaches

Latvia

1. International agreements

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in

accordance with the provisions of Article 27, was signed on 15 April 1992 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 15 April 1992 and has been ratified.

2. Provisions in private international law

3. Provisions in civil law

3.1. Marital capacity

Latvian civil law prohibits marriage under age 18.

A person who has reached 16 years of age may marry with the consent of his or her parents or guardian if the marriage is concluded with a person of marriageable age (Section 33 of the Civil Code).

3.2. Consent

The consent of the two intending spouses must be expressed in person.

3.3. Celebration of marriage

Under civil law, marriage must be celebrated in the personal presence of the two intending spouses and two adult witnesses. The Registrar General's representative [civil authority] must ask the intending spouses if they wish to marry. If they both say that they do the civil authority declares them married on the basis of that agreement (Section 57).

3.4. Annulment of marriage

Sections 59 to 64 of the Civil Code provide for annulment of marriage in the following circumstances:

- if the marriage was not celebrated by a civil authority;
- if the marriage was contracted under the pretence of intent to found a family;
- if the marriage was contracted before the spouses, or one of them, had reached the permitted age for marriage under civil law;



- if, when the marriage took place, one of the spouses had been declared incapacitated on account of mental illness or mental deficiency, or because of being unable to understand the significance of, or control, his or her actions;
- if the marriage was prohibited on grounds of kinship between the spouses;
- if, when the marriage was celebrated, one of the spouses was already married.

Latvian civil law stipulates that a spouse may contest the validity of a marriage if he or she was married under unlawful threat (Section 67).

4. *Protection measures*

5. *Provisions in criminal law*

6. *Provisions of the law on foreign nationals*

7. *Policies and approaches*

G. Rupenheite reports that the term “forced marriage” is not used in Latvian law or regulations and adds that the Latvian Ministry for Children and Family Affairs has no research on forced marriages.

However, the Anti-Violence Centre at Dardedze has conducted a research project on marriage, having children, and factors that promote good parent-child relationships. The study⁴³ investigated Latvians’ attitudes to marriage as an institution,

reasons for marriage and conceptions of it.

43. Copies of the study may be obtained from the Ministry for Children and Family Affairs.

Luxembourg

1. *International agreements*

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 2 February 1989 and has been ratified.
- The 1989 United Nations Convention on the Rights of the Child was signed on 7 March 1994 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of

Parental Responsibility and Measures for the Protection of Children, which has not yet entered into force, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. *Provisions in private international law*

Marriages contracted abroad between Luxembourg nationals, or between a Luxembourg national and a foreigner, are deemed valid if they are celebrated according to the normal conventions of the country in question, if they are preceded by publication of notice as provided for in Article 63 of the Civil Code (“Documents on civil status”), and if the Luxembourg national has in no way contravened the provisions of the code’s previous chapter on substantive conditions for marriage (Article 170 of the Civil Code).

The rule applied is that marriage depends in principle on personal status: it is generally accepted that when intending spouses are not of the same

nationality the marital capacity criteria for each are governed by his or her own national law, even if the woman acquires her husband’s nationality through marriage. It follows that, with regard to marital capacity, a marriage contracted abroad between a Luxembourg national and a foreigner is governed by Luxembourg law (Lux. 11 March 1903, 6, 226).

In accordance with both Article 170 of the Civil Code and Article 5 of the Hague Convention regulating conflicts of law pertaining to marital regimes, the formal requirements for the marriage of a Luxembourg national in a foreign country are governed by the law of the place of cele-

bration. It is under that law that the officiating civil authority is competent, and that law which applies in the event of any breach of a formal requirement.

For a marriage to be celebrated, one of two conditions must be met:

1) when one of the intending spouses is a Luxembourg national or resides habitually in Luxembourg, both of the intending spouses must satisfy the substantive requirements for marriage under Luxembourg law, or;

2) each intending spouse must satisfy the substantive requirements for marriage under the law governing his or her personal status (Article 171 of the Act of 20 December 1990).

3. Provisions in civil law

3.1. Marital capacity

Men who have not reached 18 years of age and women who have not reached 16 years of age are not allowed to marry (Article 144 of the Civil Code).

However, the Grand Duke is empowered to make exceptions to the age requirement where there are serious grounds for doing so (Article 145 of the Civil Code).

Males and females under 18 years of age cannot marry without their parents' consent. Any disagreement between the father and mother is treated as implying consent. If there is disagreement between divorced or separated parents, the consent of the parent who has custody of the child is mandatory (Article 148 of the Civil Code).

If the father or mother is dead, unable to express his or her wishes, or absent, the consent of the other suffices (Article 149).

If the father and mother are both dead, unable to express their wishes, or absent, the consent of grandfathers and grandmothers is required instead. Where there is a disagreement between a grandfather and a grandmother in the same lineage or where there is disagreement between the two lineages, the disagreement is taken to imply consent (Article 150 of the Civil Code).

A lawfully acknowledged illegitimate child who has not reached the full age of 18 cannot marry without the consent of whichever parent acknowledged him, or of the two if he was acknowledged by both. Disagreement between the parents is taken to imply consent. The provisions of Article 149 apply to illegitimate children who are minors (Article 158 of the Civil Code).

An illegitimate child who was not acknowledged, or an acknowledged illegitimate child who has lost both parents or whose parents are unable to express their wishes, may marry before the age of 18 years only after gaining the consent of the family

council (Article 150 of the Civil Code).

If there is no father, mother, grandfather or grandmother, if they are incapable of expressing their wishes, or if the ascendant whose consent is required is absent, the minor may marry before the age of 18 years only with the consent of the family council (Article 160 of the Civil Code).

3.2. Consent

There is no marriage without consent (Article 146 of the Civil Code).

If, in the cases provided for in Articles 148 to 150, 158 and 160, consent to marriage of a minor is refused, a district court may, on application by the public prosecution service, authorise the minor to contract the marriage if it considers the refusal unjustified. Applications are made in the form of a fixed-date summons lodged with the court of the district in which the minor is domiciled or living. The case is heard within the week. The court cannot be asked to rehear the case but the decision can be appealed within two weeks of delivery if both parties were heard, or of service of the decision if it was given by default. Appeals are heard by the High Court of Justice within a week. Both the lower and the higher court process such cases as matters of urgency. The parties' arguments are heard in chambers (Article 160 *bis* of the Civil Code).

Appeal is by notice to the other party rather than application to the court in chambers. Only preliminary examination of the appeal takes place in chambers. The appeal decision is by the court sitting in public (Cour 28 July 1938, 14, 217).

3.3. Celebration of marriage

Marriages are celebrated publicly before the civil authority of the municipality in which one of the spouses is domiciled or resides at the date of publication of the notice of marriage (Article 63) or, in cases of exemption from giving notice, at the

date of the marriage (Article 165 of the Civil Code).

3.4. Annulment of marriage

A marriage contracted without the free consent of both spouses or of one of them may be contested only by the spouses themselves or by that spouse whose consent was not given freely (Article 180 of the Civil Code).

A marriage contracted without the consent of a spouse's parents, ascendants or family council (where such consent is necessary) can be contested only by those persons whose consent was required or by the spouse in respect of whom consent was required (Article 182 of the Civil Code).

Annulment cannot be sought either by the spouses or by the parents whose consent was required if the marriage was explicitly or tacitly approved by the persons whose consent was required or if a year has passed since they learned of the marriage without their raising any objection to it. Nor may annulment steps be taken by the spouse if he or she did not raise any objection in the year after reaching the statutory age of consent to marriage (Article 183 of the Civil Code).

On the other hand, a marriage contracted by spouses who had not reached the required age, or one of whom had not reached the required age, may no longer be contested:

1) if six months have passed since the spouse or spouses reached the age of capacity;

2) if the wife who had not reached the required age conceives within six months after marriage (Article 185 of the Civil Code).

Any marriage that was not contracted publicly or not celebrated before the competent public official may be contested by the spouses themselves, the parents, the ascendants, any person with an existing interest or the public prosecution service (Article 191 of the Civil Code).



4. Protection measures

5. Provisions in criminal law

5.1. Classification of forced marriage

Forced marriage is not a specific offence in the Grand Duchy of Luxembourg.

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

The Act of 28 March 1972 on the entry and residence of foreigners, medical checks on foreigners and the employment of foreign workers

- Article 1: For purposes of applying the Act, anyone who cannot prove that they possess Luxembourg

nationality is regarded as a foreigner.

- Article 1(3): A foreigner who intends to reside in the Grand Duchy must declare his or her arrival to the local authority in which he or she intends to reside, within the time limit and accord-

ing to procedures to be determined by Grand Ducal regulation.

The Act of 27 July 1993 concerning the integration of foreigners into the Grand Duchy of Luxembourg and social measures in favour of foreigners: no provisions of this act relate to the question of forced marriages.

7. Policies and approaches

Marc Mathekowitsch of the Ministry of Justice wrote on 18 October 2004 that there were currently no provisions in Luxembourg that related specifically to forced marriage

whether in criminal law or immigration law but that the Ministry of Justice was closely studying the question of marriages of convenience. He expressed the view that all forced

marriages were necessarily marriages of convenience and were thus open to annulment on the ground of vitiated consent.

Malta

1. International agreements

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in

accordance with the provisions of Article 27, was signed on 8 March 1991 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 30 September 1990 and has been ratified.

2. Provisions in private international law

In order to be valid, a marriage celebrated either in Malta or abroad must meet all the relevant statutory conditions.

A marriage is valid in Malta if:

- the formal requirements for its validity under the law of the country where it is celebrated are observed and
- each of the persons intending to marry is capable of marriage under the law of his or her country of residence.

Under the 1975 Marriage Act marriages must be contracted in accordance with the national law of the place of celebration. This applies even if the ceremony or procedure that constitutes the marriage is not

valid according to the law of the country of residence of one of the spouses. If, however, the marriage is not valid in the law of the country where it is celebrated it will not be valid in Maltese law. The formal validity of marriages celebrated in Malta or abroad is thus governed by the law of the place of celebration.

With regard to marital capacity, Section 18(b) of the 1975 Marriage Act provides for application of the rule of double domicile. A marriage celebrated in Malta or abroad is valid in Maltese law if, in the law of the respective countries of domicile, each of the parties has capacity to marry. Capacity here is both relative (eg. a child below a certain age cannot

marry) and absolute (eg a brother and sister cannot marry). Prior to the 1975 Act the established Maltese case law was that marital capacity – including in matters of consent – was a substantive requirement for validity of marriage and was governed by the parties' national law.

These two requirements raise the important basic questions of what matters are substantive and what formal, and which law prevails in each case. With regard to the requirements for valid marriage, which are governed by the parties' national law, there is general agreement that they take in legal capacity, consanguinity, affinity, bigamy and minimum age.



3. Provisions in civil law

3.1. Marital capacity

The age requirement for contracting marriage is 16.

Paradoxically, the age of consent to sexual intercourse is 18. This is an indication of Malta's conservative attitude to sex and marriage.

3.2. Consent

The substantive and formal conditions for validity of marriage are laid down in Section 18 of the 1975 Marriage Act.

Parental consent is required for marriage of persons who, though of

marriageable age, have not yet attained majority and are still subject to parental authority.

3.3. Celebration of marriage

3.4. Annulment of marriage

If a marriage is celebrated in a foreign country, the law of that country applies in annulment matters. When a marriage is declared null, however, for the decision to be effective in Malta there must be a declaration of nullity in accordance with the 1975 Marriage Act (Section 20).

Consent is vitiated by lack of capacity and, decisively so, if obtained from one of the parties through violence, deception or error. The declaration must be made at the place which was the party's place of residence prior to the marriage. The degree of vitiation is established in accordance with the law.

Maltese courts have included the concept of respectful fear in their definition of violence. Fear of a parent or guardian may thus vitiate consent and constitute a ground for annulment of the marriage.

4. Protection measures

5. Provisions in criminal law

5.1. Classification of forced marriage

Marriage of convenience is an offence punishable by imprisonment.

There is no specific reference in criminal law to forced marriage.

There are, however, a number of offences which may apply in situations of forced marriage. Issuing threats, for example, is in itself an offence, as are kidnapping and

having sexual relations with a person without their consent.

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

7. Policies and approaches

Agenzija Appogg is a government agency set up to protect children in need of care, develop human resources, integrate all aspects of social-service provision and harmonise standards and practice. It currently has 24 units at work in many sectors of the community.

Appogg provides sheltered accommodation for women under a programme known as "L-Ghabexx". It offers quality support to women and their children who are victims of domestic and family violence. The main aims of the programme are to provide a safe refuge for women and their children who urgently need temporary accommodation in a secure environment.

There is a 24-hour crisis intervention service for women who are victims of domestic or family violence. It offers professional support, with individual and group sessions, for women and their children who are in the process of leaving abusive relationships, the aim being to enable them to recognise the effects of the abuse and to plan for their future. The service works to raise awareness among women and children of the cycle of violence and its damaging effects, and to help them to understand that abuse can never be accepted or justified. It hopes to achieve greater public awareness about domestic and family violence, with a view to pro-

moting a society that has zero tolerance for violence.

Women who want to use the accommodation service need to contact Appogg's domestic-violence unit in order to be assessed. The assessment focuses on the person's circumstances and on whether the provision of accommodation will meet the need. It takes account of the interests of children. If the applicant's safety is at risk, accommodation will be provided immediately. Priority is given to people in emergency situations. As far as possible, accommodation is not provided for longer than three months.

Netherlands

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of let-

- ters, was signed on 10 December 1962 and ratified on 2 July 1965.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in

accordance with the provisions of Article 27, was signed on 23 July 1991 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was



signed on 6 February 1995 and has been ratified.

- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement

and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1st January 2002, amends the Convention

of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

3. Provisions in civil law

Marriage is governed by an Act of 1991.

The statutory age of majority is 18 years.

3.1. Marital capacity

The statutory minimum age for marriage is 18 years. If someone younger wishes to marry, their legal representative must obtain permission from the civil court.

3.2. Consent

3.3. Celebration of marriage

3.4. Annulment of marriage

4. Protection measures

5. Provisions in criminal law

5.1. Classification of forced marriage

The Criminal Code contains no definition of forced marriage.

Under Article 242 of the code, however, there is scope for prosecution in cases of forced marriage on the basis of other offences such as rape. A person who, by means of a violent or other action or the threat of violence or of some other action, forces another person to submit to acts involving sexual penetration, is guilty of rape and liable to imprisonment for up to 12 years and a Category 5 fine.

Acts of sexual penetration committed on young people aged over 12 and under 16 are also punishable irrespective of whether any form of duress was used. Perpetrators are liable to imprisonment for up to eight years or a Category 5 fine if the offence occasioned serious physical injuries. If the perpetrator used some form of duress the penalty is the same as for rape of an adult.

Irrespective of the victim's age, the maximum term of imprisonment is 15 years in cases where death results.

Article 247 of the Criminal Code classifies all other sexual acts as indecency. If committed against young people under 16 they are punishable, even if duress was not used. Perpetrators are liable to a maximum term of imprisonment of six years or a Category 4 fine.

If the offence is committed with the use of force or some other form of duress, the penalties are more severe: imprisonment for up to eight years or a heavier fine. These provisions apply irrespective of the victim's age.

If the offence occasioned serious physical injuries, the maximum term of imprisonment is increased to 12 years although the amount of the fine is unchanged.

Prosecutions can also be brought for unlawful imprisonment (under Articles 282 and 283), duress (Article 284) or threats and intimidation (Article 285(a))

5.2. Prosecutions in cases of forced marriage

In an exception to the general principle that a limitation period runs

from the day an offence is committed, in the case of sexual offences against minors it runs from the day following the victim's 18th birthday. This provision has been in force since 1 September 1994.

Criminal proceedings begin with the lodging of a complaint by the victim or a third party. On 1 December 1991 a new rule came into force in respect of sexual offences committed against minors aged over 12 years and under 16 years. Prosecution for such offences depended on a complaint being made by the victim or by parents. When this provision proved difficult to apply, it was amended by the Act of 10 September 2002: the public prosecution service is now required to interview the victim in order to ascertain that the offence was not committed with his or her consent. If it was, the prosecution may be dropped under the principle of discretionary prosecution.

6. Provisions of the law on foreign nationals

Family reunification is governed by the Aliens Act 2000. The Act does not, however, lay down the conditions for family reunification, these being fixed by an official circular on foreign nationals.

Under a government agreement between the Christian Democrats, the Liberals and the populist Pim For-

tuyt List, family reunification would be made more difficult. A foreign national wishing to bring his or her family to the Netherlands would have to be at least 21 years of age and would have to provide significant financial guarantees. In particular, his or her income would have to be at

least 130% of the national minimum guaranteed income.

A foreign national who meets the stipulated conditions can bring his or her spouse to the Netherlands provided that the two partners are adult and will live together after family reunification.



A foreign national wishing to bring his or her family must possess means of subsistence that are:

- autonomous, i.e. derived from work or from contribution-based social benefits or a social allowance unconnected with family reunification;
- secure, i.e. to which there is at least one year's entitlement;
- and
- sufficient – the level of income required depending on the composition of the household. The income requirement is not applied to people who are certified permanently incapable of work, who have sole responsibility for a child aged under five years, or who are over fifty-five and a half years of age.

If the foreign national applying for family reunification possesses an unlimited residence permit, the income requirement is reduced to 70% of the national minimum guaranteed income for the size of family in question. If he or she is under 23 years of age, the further condition

applies that the applicant should work for at least 32 hours a week.

If the foreign applicant himself or herself came to the Netherlands under the family reunification procedure, he or she must have lived there lawfully for at least three years before applying for a spouse to come to the country.

People admitted to the Netherlands under the family reunification procedure are granted a residence permit valid for one year and renewable annually.

The Nationality Act of 19 December 1984, as amended in 1994, provides that foreign nationals married to citizens of the Netherlands for at least three years may be naturalised.

Applicants must hold a permanent residence permit and must be integrated into Netherlands society – a condition which implies “reasonable” knowledge of Dutch. The applicant's presence must not constitute a threat to public policy or national security. In the four years prior to the application, he or she must not have been convicted of a criminal offence pun-

ishable by imprisonment or a fine of more than EUR 450.

Unlike other foreign nationals who are naturalised, spouses of Netherlands nationals may retain their original citizenship.

There is no length-of-residence requirement for an application by a foreign national married to a Netherlands national.

Applications are made to the office of the municipal registrar in the municipality where the applicant lives. The municipal authority carries out an investigation, including an interview with the applicant, to assess his or her ability to speak Dutch. The application is then forwarded to the Immigration and Naturalisations Department of the Ministry of Justice.

The procedure takes between six and twelve months.

Naturalisation is not automatic. It may be refused if the applicant's presence constitutes a threat to public policy, morality, public health or internal security. Decisions may be appealed.

7. Policies and approaches

In the Netherlands, according to Aydogan Sezai of the Transact association, if a girl who realises she is at risk of being forced to marry is still at school, there will be someone there to whom she can confide – a form teacher or student support officer – who on her behalf will approach both her parents, or her father alone, or can contact the police. “The student support system is being developed in our country following the murder of a Turkish girls who had been in a sexual relationship and was the victim of an “honour killing” Student support staff are particularly attentive to the situation of girls during the summer holidays. There have been several cases which have alerted the authorities to the problem of girls failing to return to the Netherlands after the holidays.”

Sheltered accommodation exists for women who have suffered vio-

lence, but these facilities have no expertise on forced marriages. The violence involved in cases of forced marriage is not only psychological and physical, it is also sexual. The woman is forced to marry a man whom she does not want, which implies sexual intercourse under threat.

A woman who finds herself in such a situation in the Netherlands will initially be accepted by a shelter. If she then expresses a wish for independence, she will be helped to find municipal accommodation and may also receive a living allowance from the municipality.

A number of associations run training programmes about forced marriages. Videos are shown in schools about the role of student support services, and students are thus made aware that opposing a marriage entails risks. While it is recognised

that deep-seated values cannot be changed, the message is conveyed that the law of the land must be obeyed.

Each municipality has a social support service to provide advice and a sympathetic ear.

Some municipalities have special assistance centres. (See the website: www.huiselijkgeweld.nl).

People who need to talk about violence can contact the Korrelatie Foundation (by telephone at 0900-1450 or by e-mail: vraag@korrelatie.nl).

A further help line number is 020-6130245.

Certain organisations specialise in helping migrants: the Kezban Foundation, for example, disseminates information about domestic violence (info@st-kezban.nl), and the Shakti Foundation is another source of help and support (e-mail: shakti@iae.nl).



Norway

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters, was adopted by Norway on 10 September 1964.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 21 May 1981 and has been ratified. The optional protocol to the Convention was signed in 2000.
- The 1989 United Nations Convention on the Rights of the Child was signed on 8 January 1991 and has been ratified.

2. Provisions in private international law

In a memorandum of 5 July 2005, the Ministry of Children and Family Affairs suggest that a marriage contracted abroad, when one or both spouses is below 18 years old, or if the marriage is contracted by proxy, shall not be valid in Norway. This proposal is suggested to be valid for all Norwegians citizens and persons

who are resident in Norway. The intention is to prevent child marriage and forced marriage. To prevent serious negative impact due to lack of acknowledgement of a marriage the Ministry has proposed a possibility for approval of the marriage as valid if there are strong reasons. Either spouse may seek an annulment if he

or she was forced into concluding the marriage. Some people may prefer a divorce. For that reason the Ministry in the same memorandum suggest that a spouse or both spouses may demand a divorce directly without been separated for at least one year if he or she was forced into concluding the marriage.

3. Provisions in civil law

3.1. Marital capacity

In Norwegian law, 18 years is the minimum age for marriage.

Persons under 18 years may marry, but not without the consent of a parent and authorisation from the county governor. The county governor may only give permission where there are special reasons for contracting a marriage. The main rule is that authorisation is not given to a person under 17 years.

The Ministry of Family and Children Affairs suggest in a memorandum of 5 July 2005 that when the couples are below 16-year old, the county governor should not give dispensation for marriage.

Adults who lack legal capacity must have a guardian's consent if they wish to marry.

3.2. Consent

3.3. Celebration of marriage

Officials competent to celebrate marriage are public notaries, clerics of the state church or ministers of other denominations, officials of

humanist or recognised non-religious organisations that receive public funding, persons authorised to celebrate marriages by the Ministry when necessary, due to long distances or other reasons. In the later case, the appointment is made for four years.

The two spouses must appear before the person officiating in the presence of two witnesses. The official will declare them lawfully married and enter the marriage in the civil registrar following the exchange of consent. Ministers of religion may perform marriages without prior public authorisation but they are required to check that the conditions for marriage have been properly met.

A guarantor who knows the spouses well is required to answer administrative questions, notably for purposes of checking that the necessary conditions have been met.

3.4. Annulment of marriage

Norwegian law makes a distinction between void and voidable marriages. A marriage is void if the basic

requirements for marriage were not met when it was contracted. Either spouse may seek an annulment if he or she was forced into concluding the marriage (Article 16 of the Marriage Act, Law 47 of 4 July 1991).

The application for annulment must be received within six months from the constraint and no later than five years after the date of marriage.

Voidable marriages are those contracted despite the existence of an impediment. In that case, the marriage is considered as nonexistent.

The county governor may also seek an annulment. This can be helpful if one/either/both spouses find it hard to seek an annulment.

Either spouse may seek dissolution of the marriage if it was contracted contrary to Section 3 or Section 4 of the Marriage Act. Section 3 prohibits marriage between close relatives and Section 4 prohibits marriage when a previous marriage subsists.

4. Protection measures

A marital agreement concluded between parents on behalf of a minor

is not binding (Article 30a of the Childhood Act, No. 7 of 1 April 1981).



5. Provisions in criminal law

5.1. Classification of forced marriage

Forced marriage is prohibited under criminal law. Forcing someone into marriage is punishable by imprisonment. It is also prohibited under Norwegian law to incite a person to marry in another country or to agree a marriage on behalf of a minor.

Anyone who forces another person to conclude a marriage through recourse to violence, deprivation of liberty, undue pressure or other unlawful behaviour, or through the threat of such behaviour, is guilty of the offence of forced marriage. The penalty is imprisonment for up to six years. Accomplices are liable to the

same penalty (Article 222 (2) of the Criminal Code).

A person is regarded as an accomplice if he or she knowingly gives false information to the victim, or to the police or other authorities, with the intention of bringing about a forced marriage.

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

The Immigration Act No. 64 of 24 June 1988 governs the entry of foreign nationals into the Kingdom of Norway and their presence in the realm, as well as the Immigration Regulations No. 1028 of 21 December 1990.

The Immigration Act has no specific provisions to counteract marriages of convenience, apart Section 23 paragraph 1a of the Immigration Regulations, which states that the spouses shall live together. The immigration authorities can, however, reject a residence permit application if the marriage is considered to be *pro forma*, i.e. if the marriage is without any reality and is motivated entirely by evading the immigration law.

In December 2001 the Government appointed an independent commission to draft a new Immigration Act. The commission published its report (NOU 2004: 20 New Immi-

gration Act) on 19 October 2004. It proposed a new provision stating that a residence permit can be denied if the marriage appears to be motivated mainly by obtaining a residence permit for the spouse (section 58, paragraph 3 of the law proposal). The report has been widely disseminated for a consultation which ended in July 2005. On the basis of the report and the consultation, the government has to prepare a new Immigration Act, which must be submitted to the Parliament for adoption before 1 January 2007.

At the present time, the Immigration Act has no explicit provision on forced marriages.

On 19 August 2005, the government submitted to the Parliament amendments to the Immigration Act to counteract forced marriages (Ot.prp. No. 109 (2004–2005) regarding amendments of the Immigration

Act). The government proposed that it should be established by law (i.e. statutory provisions in the Immigration Act) that family reunification could be refused if the spouse does not give her/his consent to his/her spouse's residence permit, or if the immigration authorities find that it is probable that the marriage is against one of the spouses' will. The purpose of the proposed amendments is to prevent granting of residence permits on the basis of forced marriages.

For the same purpose, the government also proposed a new provision, stating that a foreigner who has married a Norwegian resident abroad will not obtain a residence permit until the spouse has returned to Norway and has been interviewed by the immigration authorities. The provision aims to prevent forced marriages. The Government has proposed exceptions to this rule.

7. Policies and approaches

In December 1998, an action plan against forced marriages was set up. Its two main aims were to prevent young people from being exposed to forced marriage and to provide better help and support to young people who are, or have been exposed to forced marriage. The most important measures under this plan were information, establishing a hotline and co-operation with NGOs.

The government prepared different kinds of information materials about forced marriage aimed at various target groups, such as young people that have or can be exposed to the problem, parents and employees in the public and private sectors. The information is presented in bro-

chures, articles in magazines, video and leaflets.

In April 2000, the Ministry of Children and Family Affairs has organised an advice service on questions relating to forced marriage. This hotline has two main target groups; those who are exposed to forced marriage and bodies who need to know where young people can go for further help. The hotline will be evaluated after 3 years of operation (2003).

Some NGOs and minority-groups have been involved in actions against forced marriage before the work on the action plan started. The minority groups have much better opportunities, compared with the community at large, to bring about and contribute to change of attitudes amongst their

members. Therefore, the Norwegian government emphasised the importance of dialogue and close cooperation with NGOs and minority groups in this matter to solve the problem of forced marriage.

The period of the action plan was 1999–2001.

In April 2002 the new government presented their strategy to continue to combat forced marriage. It included 30 measures: public services to help the girls concerned; development of information aiming young people and parents; continuation of the links with NGOs and minority groups and financial support. The government will also review the legislation to see if



changes can help preventing forced marriage.

The main objective is to mobilise the governments of the migrants and refugees countries of origin. Without their co-operation, the practice of forcing young people into marriage will continue. Therefore, NGOs' work in these countries must be supported to combat forced marriage.

Link to the plan of action against forced marriages:

<http://www.odin.no/bfd/english/doc/handbooks/004021-120005/dok-bn.html>

In 2000 and 2004, action programmes were introduced to tackle the problem of domestic violence. Efforts have also been directed at

men who perpetrate this type of violence.

A Committee on Violence against Women was created in 2000.

Norway has set up a National Centre for Information and Research into Violence and Post-traumatic Stress. The centre conducts researches and disseminates information and results on the topics dealt with. It provides training courses for police and the health sector to help them deal more effectively with both the perpetrators of violence and their victims.

There are some 50 women's shelters in Norway. Most of them were set up by voluntary women's groups which are responsible for running

them and receive financial support from the state and local authorities.

In 2002, police forces introduced the district-level post of coordinator of action against domestic violence, the aim being to reinforce police efforts at prevention in this area.

Victims of sexual or domestic violence – including women subjected to sexual violence by their husbands – are entitled to apply for free legal aid.

The Code of Criminal Procedure stipulates that a person may be denied access to a specific area or barred from contact with another person if there is reason to suspect that he or she might infringe the right of the other person to refuse his or her presence.

Poland

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters, was signed on 17 December 1962 and ratified on 8 January 1965.
- The Convention on the Elimination of All Forms of Discrimination

against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 30 July 1980 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 7 July 1991 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable

Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1 January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

3. Provisions in civil law

3.1. Marital capacity

The marriage age is 18 years for both spouses.

Marriage of a minor aged 16 years may be authorised by a guardianship court if there are serious reasons for doing so and provided the interests of the family are protected.

3.2. Consent

Consent must be manifested as a concerted wish. The declaration must be made jointly.

3.3. Celebration of marriage

Previously, only the authorities of the state could celebrate marriage. However, religious marriage has been

permitted since the Act of 24 July 1998.

Marriage may be celebrated before a chief registrar in the presence of two adult witnesses. The spouses exchange consent, thereby manifesting their wish to marry. If the ceremony takes place before a minister of religion, the spouses are required to make two separate joint declarations of intent, one with regard to civil union and one with regard to religious union. They agree to be bound by both ecclesiastical law and the Family and Guardianship Code.

3.4. Annulment of marriage

The conditions for annulment of marriage in Poland are very strict,

and grounds are limited – namely lack of capacity, mental illness, kinship and bigamy. An action for annulment may be brought by either one of the spouses or by the public prosecution service.

The 24 July 1998 Act extended the grounds for annulment to cover forced marriage: marriages are void if they were based on an error with regard to identity, if one of the parties was unable to give deliberate expression to his or her wishes, in cases of threat by one of the parties or a third party, or where the circumstances of the marriage gave one of the parties grounds to fear that he or she, or another person, was under serious threat.



4. Protection measures

5. Provisions in criminal law

Polish criminal law was reformed in 1997 and a new criminal code came into force in 1998.

5.1. Classification of forced marriage

The Criminal Code includes no specific offence of forced marriage.

Nor, however, does it place any limitation on a victim's entitlement to lodge a complaint.

Family violence is covered by Article 184 (anyone who inflicts physical or psychological ill-treatment on a family member, a person temporarily or permanently in his or her charge, a minor or a vulnerable person is liable to a term of imprisonment of between six months and five years).

The penalty increases to ten years' imprisonment if the perpetrator has, by his or her actions, put the victim's life at risk.

However, this provision has not proved effective against marital violence, few cases of which are reported. There are various explanations for this: firstly, victims are afraid to make a complaint (because

they feel ashamed or lack confidence in the authorities) and secondly, when complaints are made perpetrators tend to receive only the minimum sentence (few prison sentences are imposed and those that are are short).

A prosecution does not necessarily have to be initiated by the victim. Ill-treatment can be reported by any member of the public who is aware of it.

The penalties for rape are set out in Article 168 of the Criminal Code. Anyone who uses force, threat or other unlawful means to compel another to commit or submit to an immoral act is liable to a term of imprisonment of between one and ten years.

The law also covers aggravating circumstances. The minimum penalty for particularly cruel acts of violence, for example, or for rape by more than one person, is three years' imprisonment. This provision extends to rape within marriage.

In the latter case, the victim must take the first step to initiate prosecution.

Rape is classed as an offence against personal freedom.

Under Article 199 of the Criminal Code it is an offence to abuse a person's vulnerability in order to induce him or her to have sexual intercourse (prostitution is not covered by this provision). The penalty can be as much as three years' imprisonment.

Article 253(1) of the code lays down penalties for engaging in human trafficking, even with the consent of the persons trafficked. Anyone convicted of the offence faces up to three years' imprisonment.

In practice, this article of the Criminal Code is rarely used. It does not include a definition of "trafficking" and it is too general.

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

7. Policies and approaches

Portugal

1. International agreements

- Portugal has signed the Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of

Article 27, was signed on 30 July 1980 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 21 September 1990 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement

and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1st January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

Articles 25, 26, 28, 31, 32 and 49 to 54 of the Código Civil [Civil Code] set out the rules applicable under private international law. Article 25 states that individuals' civil status, legal capacity, family relationships and inheritances are governed by the personal laws of the individuals con-

cerned, subject to the restrictions laid down in this section of the code.

The personal law to which an individual is subject is that of the country of which he or she is a national. However, a legal transaction performed in the country of habitual residence of a person who seeks to register it in Por-

tugal will be recognised there, subject to certification under the law of the country concerned and provided that country's legal system is competent (Civil Code, Article 31).

The personal law applying to a stateless person is that of the place where he or she habitually resides or,



in cases of minors or persons whose legal capacity has been withdrawn, the place of lawful domicile (Article 32(1)).

Where there is no habitual residence, the provisions of Article 82(2) apply (Article 32(2)).

Under Article 49 the substantive requirements for contracting marriage are determined, in the case of each intending spouse, by his or her personal law – which thus governs absence of consent and vitiated consent.

Article 50(1) provides that the formal requirements, with certain exceptions set out in the following article, are determined by the law of the state in which the marriage is celebrated.

The marriage of two foreign nationals in Portugal may be celebrated according to the formal requirements of the contracting par-

ties' national law, in the presence of the appropriate diplomatic or consular representatives – provided that the national legal system recognises Portuguese diplomatic or consular representatives as having similar authority (Article 51(1)).

The marriage of two Portuguese nationals in a foreign country or of a Portuguese national with a foreign national may be celebrated in the presence of a Portuguese diplomatic or consular representative or of a Catholic priest. In some such cases the marriage must be preceded by the publication of notice by the competent authority unless that requirement is waived under the terms of Article 1.599 (Article 51(2)).

The marriage of two Portuguese nationals in a foreign country or of a Portuguese national with a foreign national under canon law is deemed to be a Catholic marriage irrespective

of the formal requirements under local law. The transcript of such a marriage will form the basis of an entry in the parish register (Article 51(3)).

The substance and effects of marriage contracts and of property arrangements, whether statutory or contractual, are determined by the national law of the intending spouses at the time of the marriage (Article 53(1)). Where the intending spouses are of different nationalities, the applicable law is that of their shared place of habitual residence at the date of the marriage or, failing that, of their first place of residence as a married couple (Article 53(2)).

If the applicable law is that of a foreign state and one of the intending spouses habitually resides on Portuguese territory, it may be stipulated that one of the regimes recognised by the code is to apply (Article 53(3)).

3. Provisions in civil law

The relevant provisions are those of Articles 134 to 188 of the Código do Registo Civil [Code of Civil Registration].

In terms of substantive requirements for the marriage of a foreign national, a foreigner who intends to marry in Portugal in accordance with one of the forms of marriage recognised in the code must present a certificate of civil status issued not more than six months previously – the competent authority in his or her country of origin may specify some other length of time – in order to prove that there is no impediment to celebration of the marriage (Code of Civil Registration, Article 166(1)).

If the intending spouse cannot produce such a certificate – because his or her country does not have diplomatic or consular representation in Portugal or for another reason outside his or her control – the registry office responsible for the celebration of the marriage can instead verify that the substantive conditions for marriage have been met, issued by (Code of Civil Registration, Article 166(2)).

The procedure for verifying the substantive conditions for marriages by foreign nationals is laid down in Articles 261 to 265 of the Code of Civil

Registration. A foreigner who intends to marry in Portugal in accordance with one of the forms of marriage recognised in the code and who is prevented from producing the Article 166 certificate – because his or her country does not have diplomatic or consular representation in Portugal or for some other reason outside his or her control – may apply to the selected registry office for verification that he or she meets the substantive conditions for marriage (Code of Civil Registration, Article 261).

When applying, the applicant must provide full personal details for him/herself, the other party and the parents of both. He or she must declare that there is no impediment to celebration of the marriage and must explain why the necessary certificate of civil status cannot be produced (Code of Civil Registration, Article 262).

When the required evidence has been submitted and the necessary inquiries made, the registrar will deliver a decision granting or refusing a short-form certificate (Code of Civil Registration, Article 263(1)). Issue and refusal of the certificate are entirely at the registrar's discretion (Code of Civil Registration, Article 263(2)).

The certificate is issued by the registrar and must contain full personal details of the applicant and the other party, as well as the date of the decision of authorisation and the term of validity (Code of Civil Registration, Article 264(1)). The certificate is valid for six months from the date of issue (Code of Civil Registration, Article 264(2)).

If the registrar refuses to issue a certificate, the applicant can challenge the decision in the courts (Code of Civil Registration, Article 262).

3.1. Marital capacity

Article 130 stipulates that the age of majority is 18 years, but the legal minimum age for marriage is 16 years. In no circumstances is marriage permissible for persons who lack legal capacity.

Being under the marriage age (16) constitutes an absolute impediment to marriage.

3.2. Consent

If one or both of the intending spouses are minors, they require permission, in the presence of two witnesses, from a parent or guardian. The registrar may waive the parental permission requirement if there are important reasons for the marriage to be celebrated and the minor is suffi-



ciently mature physically and psychologically (Civil Code, Article 1612). Absence of parental permission is merely a relative impediment to marriage in that a court can grant an exemption (Civil Code, Article 1609).

The consent of the spouses is strictly personal (Civil Code, Article 1619).

Marriage by proxy is permitted under Portuguese law (Civil Code, Article 1620). One of the intending spouses may delegate authority to an appointed representative: in order to do this it is sufficient to go to a notary and give consent, and the notary will draw up a proxy document. This must contain specific authority to contract the marriage, name the other intending spouse and indicate how the marriage will take place. The declared intent of the intending spouses to marry implies acceptance of all the legal effects of the union, subject to any stipulations made in the marriage contract. The proxy becomes invalid if it is revoked or if the principal or representative dies or becomes incapacitated (Civil Code, Article 1621).

3.3. *Celebration of marriage*

Before any marriage is celebrated, the law (Article 1690 of the Civil Code) requires that notice of it be published in order to ensure there is no impediment to it. Any individual who is aware of an impediment is entitled to declare it up to the date of the marriage. The marriage cannot be celebrated before expiry of an eight-day waiting period from the date of removal of the impediment, unless a court decides otherwise.

Article 1587 of the Civil Code recognises both Catholic and civil marriage (this has been the position since the Act of 25 December 1970). Both forms of marriage have effect in civil law. Civil marriage is celebrated by a civil authority, while Catholic marriage is celebrated in accordance with the concordat concluded between Portugal and the Holy See on 7 May 1940. Religious marriage is subject to the rules of the Civil Code. Articles 1615 and 1616 provide that the celebration is public, in the presence of two witnesses. Article 1590 provides for marriages to be celebrated

urgently if either party is at the point of death, if the bride is about to give birth, or in circumstances of imminent peril. In such cases the marriage will be entered provisionally in the civil register pending confirmation by the civil authority. The civil authority may refuse to confirm the marriage on the grounds that the legal requirements for marriage were not met; that formal requirements for the urgent celebration procedure or for provisional registration were not met; or that there are indications that the marriage was celebrated for unlawful reasons or that documents were falsified.

Under Article 1664 of the Civil Code, a marriage between a Portuguese national and a foreign national celebrated outside Portugal is registered at the Portuguese consulate responsible for the territory in question. It is entered in the civil register when it has been legally recognised under the procedure regarding foreign legal decisions and provided that it does not violate the basic principles of Portuguese and international public policy.

A marriage between a Portuguese national and a foreign national celebrated in Portugal must comply with the formal requirements and conditions laid down in the Code of Civil Registration (Code of Civil Registration, Article 164).

As mentioned under "Provisions in private international law", marriages between foreign nationals may be celebrated in Portugal in accordance with the formal requirements laid down by the national law of one of the intending spouses, in the presence of the appropriate diplomatic or consular representatives – provided that the national legal system in question recognises Portuguese diplomatic or consular representatives as having similar authority (Code of Civil Registration, Article 165).

There are, however, certain special rules that apply to marriages between foreigners in Portugal, notably with regard to:

- the validity of foreign documents supplied by another state for purposes of enabling a marriage to take place in Portugal. Documents supplied by another country, in accordance with the

local law there, may be used for making entries in the civil register or meeting the requirements for marriage, irrespective of prior legalisation – provided that their authenticity is not in doubt (Code of Civil Registration, Article 49(1)). If these documents are in a foreign language they must be accompanied by a translation made or certified by the registrar or a public notary – in certain cases in accordance with the Notaries Code (Code of Civil Registration, Article 49(2)).

- the initial declaration of intent to marry; Specific documents, such as the intending spouses' identity cards, may be required, or a foreign national's residence permit, passport or equivalent document (Legislative Decree 228/2001 of 20 August 2001, Code of Civil Registration, Article 137).

Note: registry offices require a passport and a current visa – valid for at least as long as the period required for the marriage procedure (a requirement not specified in the legislation).

Foreign nationals may, however, be exempted from producing these documents if they marry by proxy, i.e. if they are represented by an attorney (Code of Civil Registration, Article 137(5) as amended by Legislative Decree 228/2001 of 20 August 2001).

Note: a notary will agree to draw up a proxy document and an attorney will agree to represent the foreign national spouse only if he or she has a "good reason" for marrying by proxy.

3.4. *Annulment of marriage*

The 1976 Act sets out the grounds for annulment of marriage and the persons who may bring an action for annulment.

It is the ecclesiastical courts that deal with annulment of Catholic marriages (Civil Code, Articles 1625 and 1626).

Civil marriage is considered not to have taken place if, other than in cases of urgency, it was not celebrated by the competent registrar; if it is an urgent marriage that was not subsequently validated; if consent was vitiated; if the marriage was cele-



brated in the presence of a representative not entitled to act as a proxy; or if it was celebrated between spouses of the same sex.

A “non-existent” marriage of this type has no effect in law and any individual is entitled at any time to invoke its non-existence, even without a court ruling (Civil Code, Article 1630).

Apart from “non-existent” marriages, certain marriages are liable to annulment (Civil Code, Articles 1631 to 1646). Absence of intent on the part of one of the spouses is a ground for annulment. This applies when, at the time of the marriage, the spouse in question was, for reasons of mental incapacity or otherwise, unaware of the step he or she was taking; when one of the spouses mistook the other for someone else; or when the declaration of intent to marry was expressed under physical or moral duress (Civil Code, Article 1645). In such cases a court must confirm that

there was an impediment to the marriage (Civil Code, Articles 1631 and 1634 to 1638).

An action for annulment on the grounds that an absolute impediment to the marriage existed may be brought by either spouse, their relatives in the direct and collateral lines to the fourth degree of kinship, their heirs, their adoptive parents, the public prosecution service, guardians of the spouses or a first spouse in the case of bigamy (Civil Code, Article 1639). An action is possible where a spouse was married as a minor, lacked legal capacity to marry or was not competent to do so due to a psychological disorder or dementia.

In cases of absence of intent without simulation, or of vitiated consent, only the spouse who did not give consent is entitled to bring the action. If the spouse who initiated the action dies, his or her relatives may take over the action.

An action for annulment on the ground of lack of consent must be brought within three years of the marriage being celebrated (Civil Code, Article 1644).

An action for annulment on grounds of vitiated consent is void if not brought within six months from cessation of the vitiating circumstance (Civil Code, Article 1645).

An action for annulment on the ground of absence of witnesses may not be brought later than a year after the marriage has been celebrated.

An annulled marriage may be deemed to be “putative” in favour of one or both spouses according to whether they acted in good faith in contracting it (Civil Code, Article 1647). There is a presumption of good faith, which is defined as ignorance of the vitiating circumstance, or good faith may be deduced from the fact of consent to marriage under duress (Civil Code, Article 1648).

4. Protection measures

Act 61 on protection of women victims of violence was passed in 1991. At the time of writing, however,

implementing regulations had still not been introduced.

5. Provisions in criminal law

5.1. Classification of forced marriage

The relevant provisions are to be found in Chapter V of the Criminal Code, “Offences against freedom and sexual self-determination”, Section I, “Offences against sexual freedom”.

Anyone who induces another to undergo, or engage with him, or with someone else, in copulation or anal or oral coitus by means of violence or serious threat or after rendering them unconscious or unable to resist is liable to imprisonment for between three and ten years (Criminal Code, Article 164(1)).

Anyone who, by taking advantage of hierarchical, economic or work-related authority, induces another, by means of an order or form of threat

not specified in the preceding article, to undergo or engage with him or someone else in copulation or anal or oral coitus is liable to imprisonment for up to three years (Criminal Code, Article 164(2) as amended by Act 65/98, of 2 September 1998).

There are other offences against freedom and sexual self-determination, however, such as human trafficking (Criminal Code, Article 169) and sexual abuse of children.

Article 152 of the Criminal Code deals with physical and psychological ill-treatment of a spouse. It provides for two to ten years’ imprisonment where death results, from two to eight years in cases of serious physical assault and from one to five years in

other cases. The Criminal Code previously stipulated that a man could not be charged with rape of his wife but the current version includes no such restriction with regard to the offence.

5.2. Prosecutions in cases of forced marriage

Under Article 152 of the Criminal Code, prosecution depends on the victim making a complaint. An amendment introduced in 1998, however, allows the public prosecution service to initiate proceedings in the absence of a complaint by the victim if that is in the victim’s interests and the victim does not object.

6. Provisions of the law on foreign nationals

The Civil Code states that foreign nationals enjoy the same legal status as Portuguese citizens except where the law provides otherwise (Article 14(1)).

The Portuguese state does not grant foreign nationals the same rights as are enjoyed by citizens, however, unless their country of national-

ity affords reciprocal rights to Portuguese nationals (Article 14(2)).

Under Article 67 of the constitution, which calls the family “an essential component of society” enjoying



the protection of the state, Legislative Decree 244 of 8 August 1998 makes family reunification an entitlement. The decree was amended in January 2001.

Under the decree family reunification is a right on condition that the persons being given the benefit of it (and there is an exhaustive list) previously lived with, or were dependent on, the foreign applicant in another country.

Partners must be married in order to be granted family reunification.

The decree provides that the foreign national who lives in Portugal must have "appropriate accommodation" and "adequate means of subsistence" to meet the needs of the family

members in respect of whom the application is made.

Persons admitted under the family reunification procedure receive a residence permit of the same period of validity as that held by the applicant.

Under the Nationality Act (Law 37 of 3 October 1981), as amended in 1994, a foreign national who has been married to a Portuguese citizen for more than three years can – provided that he or she is still married – obtain Portuguese nationality by mere official declaration.

Before the Nationality Act a woman who married a Portuguese national automatically obtained Portuguese nationality.

Applicants must prove their attachment to the community in Portugal, must not have been convicted of any offence punishable by more than one year's imprisonment, and must not be public employees of another country.

Renunciation of the applicant's original nationality is not required.

Declarations are registered by the municipal registrar. Registry officials have a duty to notify the public prosecution service if the foreign applicant does not meet the requirements. The public prosecution service is empowered to contest the granting of nationality at the Court of Appeal in Lisbon if a foreign national fails to meet the statutory requirements.

7. Policies and approaches

"In Portugal little research has so far been done on forced and/or arranged marriages. Associations that help immigrants or offer support to women are afraid to broach the subject openly" (from an interview with Alexandra Carvalho, of the Portuguese Council for Refugees).

Legislative Decree 423/91 of 30 October 1991 provides for victims of violent crime to receive financial support from the state. Victims of marital violence are among the categories covered. If, as the result of an assault, the victim is unable to work for at least 30 days, has suffered a significant reduction in living standards and has not obtained compensation through the courts, there is an entitlement to state support. The amount payable will be limited to the cost of actual damage. It is fixed with reference to the amounts payable to victims of road accidents and must take account of any other sources of income the victim has. Applications are made to the Ministry of Justice which has a special committee to consider them.

Act 129 of 20 August 1999 provides for a system of provisional aid to the

victims of offences referred to in Article 152 of the Criminal Code, specifically victims of marital violence, if as a result of the offence they are placed in financial difficulty. Applications for provisional aid may be made by the victim in person, by a women's aid association or by the public prosecution service. The state may require that any sum awarded, provisionally or otherwise, be paid back if the victim obtains compensation. The state is empowered to recover amounts paid from the party civilly liable.

Under Act 107 of 3 August 1999 a network of publicly run shelters was created for women who had been victims of violence. Each district is required to have at least one such facility and the conurbations of Lisbon and Oporto must have at least two. At the time of writing, implementing regulations in respect of the Act had not yet been issued.

In January 1999 the Portuguese Council of Ministers (Cabinet) adopted a programme known as INOVAR, piloted by the Ministry of the Interior, under which a unit with a staff of five was given the task of

improving relations between victims and the police. Its function is to raise awareness within the police of violence-related issues, promote a database on the problem, encourage modernisation of police stations and inform the wider public about violence.

In May 1999 the Council of Ministers approved a national plan to combat violence in the family, emphasising the need for a comprehensive policy on the subject. As a result, a number of measures were introduced, including two new pieces of legislation in 1999: the first provided for the network of publicly run shelters described above and the second for the system of provisional aid payments.

Under an Act of 1991, associations that defend women who have been victims of violence are entitled to represent them in criminal proceedings if they have written authorisation to do so. They may also make applications for compensation or support payments from the state on a victim's behalf.

Romania

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Mar-

riage and Registration of Marriages, which came into force on 9 December 1964 by exchange of let-

ters, was signed on 27 December 1963 and ratified on 21 January 1993.



- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in

accordance with the provisions of Article 27, was signed on 7 January 1982 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 28 September 1990 and has been ratified.

2. Provisions in private international law

3. Provisions in civil law

The principles governing family status are contained in Article 44 of the constitution of 21 November 1991, which reads: "The family is founded on the freely consented marriage of the spouses [and] their full equality, as well as the right and duty of the parents to ensure the upbringing, education, and instruction of their children."

Other relevant provisions are contained in the Romanian Family Code of 4 January 1954.⁴⁴

3.1. Marital capacity

The minimum age for contracting marriage is 18 years for a man and 16 years for a woman, with provision for exceptions: subject to a doctor's opinion, girls aged at least 15 may be given permission to marry (Family Code, Article 4).

Such exceptions are the responsibility of the mayor's office in Bucharest or of the county council in other areas.

3.2. Consent

Under Article 10 of the Romanian Family Code, consent must be free and informed and is given in the marriage ceremony.

Incapacitated persons are not considered competent to give free and informed consent.

3.3. Celebration of marriage

In accordance with Articles 12 and 13 of the Romanian Family Code and Article 8 of Decree 278-1960 concerning civil status records, intending spouses must express their shared wish to marry by submitting to the registry office a written and signed declaration that, among other things, there is no impediment to the marriage and by producing supporting documents. The marriage cannot be

celebrated less than eight days after the declaration has been registered. During that time anyone is entitled to declare their opposition to the marriage by notifying the registry office in writing of any impediment to it, or any failure to observe other legal requirements. If the objection is well founded the civil authority will draw up a report refusing to celebrate the marriage. Otherwise the marriage may be celebrated at the registry office in the district where one of the spouses is registered or lives.

Article 17 of the Romanian Family Code requires the intending spouses to appear before the civil authority to express their consent to marriage publicly and in person. The civil authority will officially record that consent has been duly expressed and will enter the marriage in the register. The marriage record is signed by the spouses and the civil authority.

Romanians may marry abroad in the presence of Romanian diplomatic or consular representatives in the host state – or they may go to a local registry office there. They are required to ensure that the marriage is entered in the civil register of their place of residence in Romania within six months of returning there, otherwise the marriage will not be recognised in Romania (Decree 278-1960, Article 3).

3.4. Annulment of marriage

A marriage is absolutely void in the following cases:

- if the age requirement for marriage was not met, unless, prior to the annulment, the under-age spouse reaches marriageable age or the wife gives birth or becomes pregnant;
- absence of consent on the part of the spouses – insanity being deemed to imply absence of consent.⁴⁵ Courts have also ruled that

failure to observe Article 16 of the Family Code – requiring the spouses to appear in person before the civil authority to express consent – renders the marriage null on the ground that there is no certainty with regard to personal, concomitant consent;⁴⁶

- if notice of the marriage was not published or due procedure was not followed.

Bogus marriage, entered into with the intention of circumventing the law, is absolutely void. This applies if one or both spouses contracted the marriage not in order to found a family and establish a personal and property-based relationship specific to marital union, but for other purposes.⁴⁷

In such cases annulment requires a final court decision. Any individual has an indefeasible right to bring the action for annulment.

Relative nullity applies in cases where consent was obtained through deceit or violence. The right to bring an action for annulment in such cases is strictly personal and held only by the spouse whose consent was vitiated. The action must be brought within six months of the violence ending or the deception being uncovered.

In cases of both absolute and relative nullity the marriage is rendered void retrospectively. The spouse who acted in bad faith is deemed never to have contracted marriage. The spouse who acted in good faith retains married status until the date of final annulment and is thus entitled to maintenance payments, to a share in joint property, and to inherit.

45. CSJ, decision no. 76-1993: Dreptul No. 12-1993, p. 85.

46. Trib. S., decision no. 1035-1988: RRD, No. 5-1989, p. 60.

47. Trib. S., decision no. 2969-1987: RRD, no. 7-1988, p. 57.

44. O. Capatina, Romania, *Législation comparée*, Juris-classeur, 1995.



4. Protection measures

Article 45 of the constitution makes the following stipulations: "Children and the young shall enjoy special protection and assistance in the pursuit of their rights. [...] Forms of social protection for children and the young shall be established by law. [...]"

The exploitation of minors and their employment in activities that might be harmful to their health or morals or endanger their life and normal development are prohibited."

Under Article 44 of the Romanian Family Code, married couples have

"the right and duty to provide for the development, upbringing and education of their children". With regard to minor children the rights and duties of the two parents are equal. They are required to exercise their rights, taking account only of the child's interests and under the supervision of the state, in order to ensure the children's physical, intellectual and moral development (Articles 96 and 97).

In cases of doubt and on application by the authority responsible, a parent may have his or her rights and

duties withdrawn by a court "if the child's health or physical development is endangered either by that parent's abusive behaviour or serious negligence" (Article 109).

If parents are unable to ensure the protection of a child because their parental rights and duties have been withdrawn, a committee for the protection of minors – a municipality-based welfare agency – may decide to place the child in care, after consultation with the parents and with the child if he or she is over 10 years of age (Act 3-1970, Articles 12 and 14)

5. Provisions in criminal law

5.1. Classification of forced marriage

There is no specific offence of forced marriage. Prosecutions may, however, be brought on the basis of other provisions of the Criminal Code in relation to violence against women.

Article 197 of the Criminal Code defines rape as "sexual intercourse involving a person of the male sex accomplished through the use of force or taking advantage of the [victim's] defencelessness or inability to express consent or otherwise".

The penalty for rape is imprisonment for a minimum term of two years, or three years where the offence involves aggravating circumstances.

There is no specific penalty in Romanian law for rape or sexual abuse between spouses.

Certain provisions do, however, provide women victims of marital abuse with a possible basis for legal action and claiming damages with interest. Penalties in such cases are partly governed by Act 61/1991 concerning "failure to observe established rules concerning marriage, public policy and public safety".

Apart from this Act, which deals specifically with violence between spouses, Romanian criminal law makes no distinction between the public and private spheres. The legislation on assault thus extends to marital abuse.

Under Article 180 the penalty for assault and other acts of violence occasioning physical suffering is imprisonment for between one and three months or a fine.

Under Article 181 actions which cause bodily harm necessitating medical treatment for up to 60 days are punishable by a prison sentence of between six months and three years.

5.2. Prosecutions in cases of forced marriage

A victim who wishes a prosecution to be brought under any of the above-mentioned provisions must lodge a complaint; reconciliation between the parties cancels criminal liability.

6. Provisions of the law on foreign nationals

7. Policies and approaches

A government strategy for protecting children in difficulty was developed in the years 2001-2004. It sets out a coherent overall package of response measures in which the central role falls to the National Authority for the Protection of Children's Rights and for Adoption (ANPDCA), and creates an institutional framework through which the ANPDCA can coordinate measures taken by

ministries and other government agencies responsible for social and family protection and education, with key input from local administrative bodies and civil society. The ANPDCA, a dedicated central administrative body, oversees observance of the law in the field of child protection.

The public child-protection services have the task of preparing annual, medium-term and long-term

strategic plans to restructure and develop the system of protection for children in difficulty in the local administrative area. They also supervise implementation of the strategies, and coordinate, support and review county administrative authorities' work in this field.

Slovakia

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to

Marriage, Minimum Age for Marriage and Registration of Mar-

riages, which came into force on 9 December 1964 by means of any



exchange of letters. The Slovak Republic took over the Convention on 28 May 1993.

- The Convention on the Elimination of All Forms of Discrimination

against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 28 May 1993 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 28 May 1993 and has been ratified.

2. Provisions in private international law

3. Provisions in civil law

Capacity to acquire rights and obligations originates at birth. Viable unborn children have the same capacity.

People acquire capacity fully and entirely when they reach their majority.

The age of majority is 18 years. Majority cannot be acquired before that age except through marriage. Majority thus acquired cannot be lost through the dissolution or annulment of the marriage.

3.1. Marital capacity

Marital capacity, for both spouses, is acquired at 18 years of age.

A minor cannot marry unless authorised to do so by a court for serious reasons, and provided the minor has reached his or her 16th birthday.

If the minor has not reached his or her 16th birthday the marriage is deemed not to have been concluded.

3.2. Consent

A marriage cannot be contracted by someone whose capacity to make legal agreements has been withdrawn.

A person whose capacity to make contract legal agreements is restricted may marry only subject to the approval of a court, granted in view of the social benefit of the marriage.

A marriage cannot be contracted by someone suffering from a mental disorder unless a court decides that his or her state of health is compatible with the social purpose of marriage.

A marriage is concluded by the parties' jointly declaring their wish to enter into it.

3.3. Celebration of marriage

The declaration must be made publicly and solemnly in the presence of two witnesses.

Marriage may be celebrated in a civil or a religious form.

- Civil marriages are celebrated by the authority in charge of the civil register in the district where one of the intending spouses is permanently resident, in the presence of the mayor or a municipal councillor. If the life of one of the intending spouses is danger, the marriage can be contracted before any authority in any place. The intending spouses must submit the documents required by law, must not know of any impediment to the marriage and must be aware of one another's state of health. Marriage by proxy is still possible. Where there are serious reasons for doing so, the central-government service responsible may allow a representative to make the declaration on behalf of a citizen

who is entering into a marriage. The marriage will not be valid if the declaration does not include the name of the other intending spouse.;

- In religious marriage the intending spouses make the declaration before the competent religious body and in the presence of the relevant church official. The place of celebration is determined by the religious rite. The church body before which a marriage has been contracted has a duty to submit the record of the marriage, including all the required information, to the civil registry without delay. The requirements for the conclusion of civil marriage also apply to religious marriage.

3.4. Annulment of marriage

A court may annul a marriage on its own initiative if a minor was married without the approval of a court, unless the husband who was a minor at the time of the marriage has since reached 18 years of age or the wife has become pregnant.

A court may annul a marriage on application by one of the parties when the marriage was celebrated, one of the parties lacked full capacity and the marriage was not authorised by a court.

A void marriage is deemed never to have been contracted.

4. Protection measures

5. Provisions in criminal law

5.1. Classification of forced marriage

There is no specific offence of forced marriage.

There are, however, new provisions in the Criminal Code on the offences of abduction (Article 216) and sale of, or trafficking in, children (Article 216(a)).

Abduction is defined as the removal of a child, or a person with a

mental disability, from the person who has charge of him or her by law or pursuant to an administrative decision. The offence of sale of, or trafficking in, children is committed by "anyone who, in return for remuneration, places a child in the care of another person with a view to adoption or forced labour or for other purposes".

Chapter VI of the Criminal Code, and particularly the section "Offences against the family and children", contains provisions specifically designed to protect children from different types of assault and violence. Similar protection is afforded by the provisions of the Chapter V section, "Offences constituting serious violence against civil coexistence", and



the Chapter VIII section entitled “Offences against freedom and human dignity”.

Articles 242 and 243 deal with sexual violence, and Article 217 makes it a crime to endanger the

moral development of children or young people.

5.2. Prosecutions in cases of forced marriage

6. Provisions of the law on foreign nationals

7. Policies and approaches

Spain

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by means of any exchange of letters. Spain adopted the Convention on 15 April 1969.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into

force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 5 January 1984 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 6 December 1990 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement

and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1 January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

Article 50 of the Civil Code stipulates that if two foreign nationals marry in Spain their marriage may be

contracted under either Spanish law or the law of their country of origin.

3. Provisions in civil law

3.1. Marital capacity

Under Article 46 of the Civil Code unemancipated minors cannot marry, although there is provision for exceptions (Article 48).

Persons already bound by a marriage cannot marry (Article 47).

3.2. Consent

There is no marriage without marital consent (Article 46).

3.3. Celebration of marriage

3.4. Annulment of marriage

Under Article 73 of the code, the following types of marriage are void, irrespective of their form of celebration:

- marriage contracted without marital consent;
- marriage contracted between persons prohibited from marrying under Articles 46 and 47, except

where an exception is granted under Article 48;

- marriage contracted without a magistrate or public official or without witnesses;
- marriage mistakenly contracted where an error as to the other's identity or essential characteristics crucially affected the consent given;
- marriage contracted under duress or threat of serious danger.

4. Protection measures

5. Provisions in criminal law

5.1. Classification of forced marriage

Title XII of the Spanish Criminal Code deals with crimes committed in the family. Its first chapter lays down penalties for illegal marriage.

The code includes no specific offence of forced marriage. However, it does contain particular provisions under which prosecutions are possible in cases of marital violence. In addition, case law has established the

principle that the fact of marriage does not preclude a charge of rape.

A person who celebrates an unlawful marriage to the detriment of the spouses is liable to a term of imprisonment of between six months and two years (Article 218(1)).

A person who authorises a marriage where a ground of nullity is known or on file is liable to imprisonment for between six months and two

years and two to six years' disqualification from holding an official post (Article 219(1)).

If the ground of nullity was waivable, the disqualification is for between six months and two years (Article 219(2)).

Since 1989 the Spanish Criminal Code has contained penalties for marital violence. After being taken over into the new criminal code which



came into force in March 1996, some of these provisions were subsequently amended by Framework Act 14/1999 of 9 June 1999 concerning the protection of victims of abuse.

In keeping with the Spanish Criminal Code's two-tier classification system, acts of marital violence are divided into serious and less serious offences. A serious offence is one which occasions injuries requiring medical treatment.

In Book II of the Criminal Code, concerning serious offences, Article 153 provides that any person "who habitually engages in acts of physical or psychological violence against his spouse shall be liable to a term of imprisonment of between six months and three years". This penalty applies in addition to those for offences such as assault, which the acts of violence constitute. Before the 1999 Act, Article 153 related only to acts of physical violence and did not deal with inter-spousal violence.

The same article provides that habituality of such acts of violence is assessed on the basis of their number and frequency, irrespective of how many victims are involved and of whether the perpetrator has previous convictions. Circular 1/1998 of 24 October 1998 from the Head of Public Prosecutions, concerning prosecutions for ill-treatment in a domestic or family context, instructs prosecutors to keep up-to-date registers of domestic-violence cases containing all information received – police forces having a duty to forward all relevant reports to the prosecution service. Such registers should make it easier to assess habituality of offending.

In Book III of the Criminal Code, concerning less serious offences, Article 617 provides for heavier penalties to be imposed for beating without causing wounds where the victim is the spouse. In such cases the penalty is detention for between three and six weekends and a fine between one and two months. This provision already existed prior to the 1999 Act.

Article 620 of the Criminal Code, concerning threats made with weapons or dangerous objects, similarly provides for heavier penalties where the victim is the spouse. Courts can impose the sentence of detention for between two and four weekends.

The 1999 Act amended several articles of the Criminal Code, introducing a new penalty which courts can impose in cases of homicide or assault or where Article 617 applies. Perpetrators may now be barred from approaching or contacting their victims. The maximum duration for this type of barring order is five years. This provision is additional to other measures already available which ban perpetrators from visiting or residing in certain places. It is thus possible for courts to ban perpetrators of inter-spousal violence from the marital home.

The 1999 Act also amended the Code of Criminal Procedure, enabling courts to bar persons charged with homicide or assault not only from visiting or residing in certain places but also from approaching certain persons. Such a ban may be imposed only if it is deemed absolutely necessary for the victim's protection.

In 1995 the Spanish Supreme Court delivered a number of decisions to the effect that the offence of

rape also applies within marriage. This now constitutes clearly established case law.

5.2. Prosecutions in cases of forced marriage

It is not necessary for the victim to lodge a complaint for a prosecution to be initiated. The general constitutional duty of all citizens to report offences of which they have knowledge extends to the offences covered by Articles 153 and 617 of the Criminal Code.

In addition, in the case of offences covered by Article 620, in respect of which prosecutions may, in principle, be taken only on the basis of a victim's complaint, the 1999 Act provides for an exception: if the victim is the spouse no complaint is required.

The 1999 Act withdrew the Code of Criminal Procedure provision whereby prosecutions for the lesser offence of spouse abuse could be brought only at the victim's initiative.

Circular 1/1998, issued by the Head of Public Prosecutions, emphasises the need for the prosecution service to intervene in cases of family violence, and states that such intervention "may in fact fill a gap in cases where victims refrain from reporting offences, sometimes because of cultural, economic or social circumstances which, while understandable from a human point of view, cannot be taken into account by the courts if offences have been committed that are clearly of a public nature and in respect of which the public prosecution service is required by statute to act".

6. Provisions of the law on foreign nationals

Under Framework Act (ley orgánica) 4 of 11 January 2000 concerning the rights and freedoms of foreign nationals, family life is an entitlement of foreigners living in Spain.

The Act gives foreign nationals the right to bring into the country certain members of their families, who will be issued with permits of the same duration as that held by the applicant for family reunification.

Framework Act 4 of 11 January 2000 was amended by Framework Act 8 of 22 December 2000, which sought to restrict the scope of family reunification, notably by closing down the possibility of "knock-on" applications for reunification.

The provisions of the framework act were supplemented by regulations issued on 20 July 2001. A characteristic of these is their lack of precision and the degree of latitude they

afford to administrative bodies in interpreting them.

In order to qualify for family reunification, spouses must not be separated, either legally or in practice, and their marriage must have been lawfully celebrated. If separation occurs, the spouse who was granted a residence permit under the family reunification procedure may be entitled to a permit in his or her own right if the couple have lived in Spain for at least two years.



A foreign national who wishes to bring family members to Spain must have accommodation that is sufficiently spacious and comfortable to house them; individual social security cover and cover for the persons admitted under the reunification procedure; and adequate financial resources whether in the form of earned or personal income. In assessing whether the last condition is met, the administrative authorities benchmark is a Ministry of the Interior regulation of 1989 concerning the resources required of foreign nationals seeking to enter Spain.

Article 11 of the constitution states that "Spanish nationality is acquired, preserved and lost in accordance with provisions established by law".

The rules governing the acquisition of nationality are contained in

Articles 17 to 28 of the Civil Code, under which foreign nationals may, after several years of lawful residence in Spain, apply to be granted Spanish nationality. Various criteria affect the length of residence required, including whether or not the applicant is married to a Spanish citizen.

Applicants are required to prove that they have been of "good civic conduct" and are integrated into Spanish society. They are also required to master Spanish.

Acquisition of Spanish nationality depends on renunciation of the applicant's original nationality, except for nationals of states with which Spain has particular ties (namely several Latin American countries, Andorra, the Philippines, Equatorial Guinea and Portugal).

In order to qualify, applicants must have resided in Spain for a minimum period of time, in accordance with the law and without interruption, immediately preceding submission of the application. The stipulated minimum residence period of ten years is reduced to one year for applicants who have been married to Spanish citizens for at least one year and are not separated either legally or in practice.

Local civil registry offices will forward applications to the Ministry of Justice.

Spanish nationality is granted in the form of a decree issued by the Minister of Justice. It is not granted automatically and may be refused for reasons of public policy or the national interest. Decisions can be appealed to an administrative court.

7. Policies and approaches

Act 35/1995 of 11 December 1995, on violent offences, offences against sexual freedom and assistance to victims, applies in particular to victims of marital violence. Chapter I of the Act was given effect by Royal Decree 738/1997 of 23 May 1997. However, no implementing legislation has yet been introduced in respect of Chapter II ("Assistance to victims").

If an act of marital violence constitutes an offence and incapacitates the victim for more than six months, and the victim receives no compensation or payment from either a private insurance scheme or the social security system, state aid may be payable under a national solidarity scheme.

Entitlement depends on a final court decision in the case, and the maximum level of any award is fixed with reference to the national minimum monthly wage: it will be double that amount while the victim is incapacitated, subject to a six-month waiting period; and between 40 and 35 times the same amount, depending

on the degree of incapacity, in cases where the incapacity is permanent. The sum is then adjusted to take account of personal circumstances (eg the victim's financial position and whether there are any dependents). Applications are processed by the Pay and Pensions Directorate of the Ministry of the Economy and Finance. If the ministry turns an application down, the victim may appeal to an independent ad hoc commission set up under the relevant 1995 act of parliament.

The legislation provides for provisional aid to be granted pending a court verdict if the victim's financial situation is precarious – a concept defined by government decree in 1997.

The state may, at a later date, require that any money awarded be paid back if the court finds that no offence was committed or the victim receives compensation for injury suffered. The state is also empowered to

recover amounts paid from the party civilly liable.

The 1995 Act places a duty on the public authorities investigating a case to inform the victim of the possibility of applying for state aid. Offices of the public prosecution service were reminded of this duty in Circular 2/1998 of 27 October 1998, issued by the Head of Public Prosecutions.

The Act also requires the Ministry of Justice to set up victim-assistance offices at all courts where they are needed.

Circular 1/1998, issued by the Head of Public Prosecutions, recommends that each office of the prosecution service create a domestic-violence unit with specially trained staff.

The largest police stations have units that specialise in domestic-violence cases and there are shelters in major cities for women who have left their family homes as a result of ill-treatment. The shelters are run by associations with part funding from the municipalities.

Sweden

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Mar-

riages, which came into force on 9 December 1964 by exchange of letters, was signed on 10 December 1962 and ratified on 16 June 1964.

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in



accordance with the provisions of Article 27, was signed on 2 July 1980 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 29 June 1990 and has been ratified.

- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1st

January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

The relevant law is the International Marriages Act 1904 (Law 26 1904).

With regard to recognition of foreign marriages in Sweden, if a marriage is valid in another Nordic country with which the spouses have significant ties it will be valid in Sweden.

Neither marriages involving children, however, nor forced marriages are recognised in Sweden.

Since 1 May 2004, under an amendment to the law, the general rule has been established that a marriage contracted abroad is invalid in Sweden if one of the parties is a Swedish citizen or has his or her personal residence in Sweden or if there is an impediment to the marriage.

Exemptions from the rule are possible only on exceptional or particular grounds.

A person who marries abroad is required to inform the Swedish authorities of the marriage. If the authorities decide that the marriage is valid, it will be entered in the register.

3. Provisions in civil law

The relevant legislation is the Marriage Act of 1987, n° 230.

The Act was amended by Government Bill 2003/04:48 which became law on 1 May 2004.

3.1. Marital capacity

Under the Act as amended, a minimum age of 18 has applied for all people wishing to be married under the Swedish legislation. The new rule also applies to international marriages. Legislation also makes it clear that child marriages and forced marriages entered into in another country are not recognised in Sweden.

If, under Swedish law, there are impediments to a marriage the couple will not be deemed to be married. One such impediment is failure to meet the age requirement.

3.2. Consent

The 1987 Act as amended stipulates that:

- if one party does not give his or her consent during the marriage ceremony, the ceremony shall not be valid and the couple shall not be deemed to be married;
- the marriage must be concluded in accordance with the wishes of the two parties: no one has the right to force another person to marry.

3.3. Celebration of marriage

The 1987 Act as amended also includes the following stipulations.

The civil authority who conducts a marriage must be authorised to do so. Without the necessary authorisation the marriage shall not be valid.

The two parties must be present, in person, at the same time. Each must, on his or her own behalf, consent to the marriage in response to the question asked by the civil authority. The civil authority must then declare the two persons married.

3.4. Annulment of marriage

If a marriage takes place in spite of an impediment, a report will be made to the public prosecution service, which may, in conjunction with one of the parties, apply to the court of first instance for immediate annulment of the marriage.

A person who is forced to marry by means of threats or violence is entitled to have the marriage annulled without any waiting period, i.e. immediately.

4. Protection measures

A person who is being pressurised into marriage can go the municipal

social services office. The social services staff are empowered to ensure

that he or she receives the necessary protection.

5. Provisions in criminal law

5.1. Classification of forced marriage

Since 1998, Chapter 4 of the Criminal Code, concerning offences against freedom, has contained an article explicitly penalising marital violence.

The article creates the new offence of "violation of a woman's integrity", which is defined as the

repeated commission of offences against life and liberty, or sexual offences, directed against women with whom the perpetrator has an intimate relationship. Where the offence is committed by a spouse it is classed as "gross violation of a woman's integrity". It is punishable by imprisonment for between six

months and six years, which may imposed in addition to other penalties, for example for assault.

In September 1998 a court in Uppsala delivered one of the first judgments in such a case. During the summer of 1998 the accused had assaulted his partner on four occasions in a period of six weeks. He



received a ten-month prison sentence.

The Government has implemented amendments to the Restraining Orders Act (1988:688). The intention is to make it possible to decide on a prohibition to visit when the parties have a shared home if, due to special

circumstances, there is a manifest risk that the person the prohibition applies to will commit crimes against the life, health, freedom or peace of a cohabitee. The amendments entered into force on 1 September 2003.

Since 1965 rape within marriage has been recognised as an offence.

5.2. Prosecutions in cases of forced marriage

Since 1982 the law has provided that anyone with information concerning acts of violence or rape can initiate a prosecution. It is thus no longer necessary for the victim to make a complaint.

6. Provisions of the law on foreign nationals

7. Policies and approaches

Increased attention has been given in recent years to the situation of girls and young women whose daily lives are characterised by an absence of freedom and by coercion, threats or violence.

Some girls are rigidly controlled by their families: some – even as children – are promised to husbands in arranged marriages or are forced into marriage while others are threatened and coerced if they attempt to live like other young people.

The situation of such girls is highly vulnerable. In many cases, it is the immediate family or other relatives who oppose the young woman's wishes. Not enough is known about the causes of this type of problem or about violence carried out for so-called reasons of honour.

The government has amended the law to ensure that if a Swedish national and a foreign national wish to be married by a Swedish civil authority they must satisfy the same condition as other couples with regard to minimum age.

The government has also taken initiatives affecting schools, health services, the police and social services, with a view to helping young people to cope with the risk of "honour-related" violence. If this type of coercion is to be ended, Sweden's efforts need to be coordinated with action at international level.

Focus on prevention

Most of the measures that have been taken are geared to improving prevention and the protection of individuals. The government has reviewed the types of protection available to girls and young women and has attempted to identify shortcomings and to clarify the division of responsibility between government authorities and other agencies. In

order to enable the authorities to give girls the help they need, male violence against women must be better understood and recognised.

While the government's efforts have mainly concerned girls and young women, it also needs to look at the situation of boys and young men.

The government has taken a number of measures designed to pave the way for further in-depth work on the subject and to involve authorities at all levels – central, regional and municipal. Some of these initiatives are described below

Seminars

The government organised a series of seminars for representatives of public authorities and religious denominations, women's shelters, immigrants' organisations and other NGOs, and experts in the field. The seminars looked at how public authorities and NGOs might cooperate to improve the situation of vulnerable girls and their families.

Sheltered housing and support for the social services

SEK 180 million for sheltered housing: for the period 2003–2007, the Government is setting aside SEK 180 million for sheltered housing and other measures for young people at risk of violence in the name of honour. In 2003, SEK 20 million were allocated, the bulk of which went to the county administrative boards in Stockholm County, Västra Götaland County and Skåne County to set up sheltered housing. In 2004 the county administrative boards in the three metropolitan counties have received SEK 7.5 million each for continued measures for sheltered housing and other purposes.

Commission to the National Board of Health and Welfare

The National Board of Health and Welfare has been commissioned by the Government to monitor the establishment of sheltered housing and investigate the possibility of setting up a national system of advisory support for the social services and others, within the existing structure of government agencies. The Board had to report on its work by 31 March 2005.

Good examples and methods

The government, in co-operation with the Swedish Integration Board, the National Institute of Public Health, the National Board of Health and Welfare, the National Agency for Education, the National Board for Youth Affairs and the Office of the Children's Ombudsman, has highlighted good examples and methods for preventing conflicts between the individual and the family that may be caused by ideas about honour:

- "Instructive examples – preventing individual-family conflicts", Report 2002:14;
- "Fruitful examples are there to make use of..." (stencil series 2002:8), an evaluation of eight projects designed to promote gender equality and prevent conflict that were carried out with support from the Board in 1999–2000;
- "The 2002 Integration Report" The report includes a special chapter on conditions affecting the childhood and adolescence of children and young people from foreign backgrounds. A report on this assignment was delivered in March 2003;
- "The way in. Voices on integration and gender equality", which gives specific examples of preventive action, and "Patriarchal enclaves



or no-man's-land? Violence, threats and restraints towards young women in Sweden". These reports were published in 2003.

Educational material/knowledge survey

On the instructions of the Government, the Association of Local Authorities in Stockholm County has made a survey of knowledge focusing on relations between the individual and the family. The point of departure for this survey is the crucial role played by the family as a carrier of culture and its influence on the ability of the individual to meet the values and demands of the new country. The report, which was delivered in March 2003 under the title "Working with patriarchal families – A survey of activities", is addressed to the social services, schools/pre-schools and the public authorities and NGOs concerned. The material is available on the Association's website.

Project support

Swedish integration board

The Swedish Integration Board gives priority to development projects that promote gender equality and improve the childhood and adolescent conditions of young people in vulnerable situation. In 2003 more than SEK 2.8 million was granted to these types of projects.

Resources from the Swedish inheritance fund

Since 1 January 2003, project support worth SEK 4 460 000 has been distributed to associations working to prevent and combat violence in the name of honour.

Other initiatives

Information for social services

Acting on the government's instructions, the National Board of Health and Welfare produced and distributed an information booklet about the situation of girls who live under threat and duress. It is intended for use by social services staff and is available on the Internet.

Educating parents

The National Institute of Public Health has been commissioned by the Government to collect, analyse and disseminate information about how to organise different forms of support for parents in order to achieve concrete results. The Institute had to submit its report to the Government no later than 31 December 2004.

Dialogue with religious communities

In 2003, acting on Government instructions, the Commission for State Grants to Religious Communities engaged in more in-depth dialogue with religious communities on issues relating to the rights of women and children. The committee submitted two interim reports and, on 31 December 2003, a final report. The Commission was granted SEK 300 000 for continued dialogue with religious communities on society's fundamental values.

National action plan against violence in close relationships

In its interim report (SOU2002:71), the Personal Safety Committee has proposed the adoption of a National Action Plan against Violence in Close Relationships. The report has been circulated for comments and is now under further preparation at the Government Offices.

Guidelines for processing asylum applications

Some of the people applying for asylum in Sweden may be girls and women who need protection from family members or other relations. The Swedish Migration Board has adopted guidelines for giving more adequate attention in the asylum process to women's need for protection. Some of these guidelines concern education about the concept of "honour".

Witnesses, plaintiffs and other persons

The government has set up a committee of inquiry on personal safety, whose task it is to pave the way for a national programme for the protection of witnesses, plaintiffs and other persons. The committee has produced an interim report entitled

"National action plan against violence in close relationships" (SOU 2002: 71).

Other gender equality work

At the end of 2002, the National Board of Health and Welfare had distributed SEK 7 million between a total of fourteen women's shelters for projects for women from immigrant backgrounds, women substance misusers and women with disabilities. All these projects started in 2003 and the National Board of Health and Welfare is keeping a continuous check on how work at the shelters is proceeding. A number of the projects concern girls at risk of violence in the name of honour. The experience gained will be compiled in a joint report when the projects come to an end.

"Terrafem", a support network for immigrant women, also received funding for an emergency telephone service in 20 languages to support and assist girls and woman at risk from "honour"-related crimes of violence. In June 2003 it was allocated a further SEK 300 000 to continue running the service.

National centre for battered and raped women

Since 1994, the National Centre for Battered and Raped Women had existed. Converted into a national institute, its role will be to develop methods for care and treatment and to serve government agencies, organisations and the general public as a knowledge and research centre on men's violence against women, sexual abuse and rape. It was planned to establish a national emergency telephone line for women that are victims of men's violence. A report on this work had to be submitted no later than 30 November 2004.

Action to promote gender equality in pre-schools and schools

A material "How are things? Unequal thanks! Experiences from gender equality activities in primary and secondary schools", was distributed to all primary and secondary schools in 2003.



Switzerland

1. International agreements

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 27 March 1997 and has been ratified.
- The 1989 United Nations Convention on the Rights of the Child was signed on 24 February 1997 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1st Jan-

uary 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

The federal Private International Law Act (LDIP) of 18 December 1987 (in the version of 1 June 2004)⁴⁸ includes several provisions on marriage:

- Article 43(1) provides that the Swiss authorities are competent to celebrate a marriage if one of the intending spouses is domiciled in Switzerland or is a Swiss national. Intending spouses who are foreign nationals and not domiciled in Switzerland may also be authorised to be married there by the competent authority if the marriage will be recognised in the state where they are domiciled or of which they are nationals (Article 43(2)). Such authorisation cannot be refused on the sole ground that a divorce obtained or

recognised in Switzerland is not recognised in the foreign country (Article 43(3));

- Article 44(1) provides that the substantive requirements for the celebration of marriage in Switzerland are governed by Swiss law. If the substantive conditions under Swiss law are not met, a marriage between foreign nationals may nevertheless be celebrated provided that it meets the conditions laid down by the national law of one of the intending spouses (Article 44(2)). The form of marriage celebration in Switzerland is governed by Swiss law (Article 44(3));
- Article 45(1) provides that a marriage validly celebrated abroad is recognised in Switzerland. If either of the intending spouses is Swiss, or if both are domiciled in Switzerland, a marriage celebrated

abroad will be recognised provided that it was not celebrated abroad with the clear intention of circumventing Swiss statutory provisions on the annulment of marriage (Article 45(2));

- Minors domiciled in Switzerland acquire majority if they marry in Switzerland or if they have married abroad and their marriage is recognised in Switzerland;
- Foreign judgments or measures concerning the effects of marriage are recognised in Switzerland if they were delivered in the state where one of the spouses is domiciled or habitually resides (Article 50). This provision also covers decisions on marital property, taken either in the context of measures to protect the marital union or following a death or the annulment of the marriage.

48. See Rev. crit. DIP 1988, p. 202.

3. Provisions in civil law

The rules on marriage contained in the Swiss Civil Code of December 1907 were amended by the Act of 26 June 1998, which came into force on 1 January 2000.

3.1. Marital capacity

In order to contract marriage, both men and women must have reached 18 years of age and must be of sound mind (Article 94(1)).

A person who lacks legal capacity cannot contract marriage without the consent of his or her legal representative. If consent is refused, application can be made to a court to set the refusal aside (Article 94(2)).

3.2. Consent

Engagements are made by means of a promise to marry (Article 90(1)).

An engagement is not binding on a minor or a person who lacks legal capacity unless his or her legal representative has consented to it (Article 90(2)).

There is no provision for legal action to require an engaged person to marry if he or she refuses (Article 90(3)).

3.3. Celebration of marriage

Marriage is celebrated publicly in the presence of two witnesses who are adult and of sound mind (Article 102).

The civil authority asks each intending spouse separately whether he/she wishes to be joined with the other in marriage.

When each intending spouse has answered in the affirmative, they are declared to be joined in marriage by virtue of their mutual consent.

4.4. Annulment of marriage

Under Article 104 of the Civil Code a marriage celebrated by a civil authority can be annulled only on one of the grounds provided for in that chapter of the code.

Absolute grounds for annulment (listed in Article 105) exist if:

- one of the spouses was already married when the marriage was celebrated and the previous marriage had not been dissolved by divorce or ended by the death of the other spouse;



- one of the spouses was not of sound mind when the marriage was celebrated and has not since recovered;
- the marriage is prohibited for reasons of kinship.

Relative grounds on which a spouse may apply for a marriage to be annulled (Article 107) exist if:

- the spouse was, for temporary reasons, not of sound mind when the marriage was celebrated;
- the spouse consented to the marriage in error, in circumstances where he or she either did not wish to be married or did not wish to marry the person with whom the marriage was contracted;
- the spouse contracted the marriage in error, having been deliber-

ately misled about the other party's essential personal characteristics;

- the spouse contracted the marriage under threat of serious and imminent danger to his or her life, health or honour, or to the life, health or honour of a family member.

4. Protection measures

The Federal Act of 18 March 1971 provides that:

- if a child has particular needs with regard to his or her upbringing, and notably if he or she is very difficult, has been abandoned or is in serious danger, a judicial authority may make an order providing support, or placing the child with a family or in a care home;
- the purpose of support thus provided is to supply the care, upbringing and education that the child requires (Article 84);
- the judicial authority may replace the measure with another, subject

to having, if appropriate, placed the child under observation for a period of time (Article 84).

A number of specific provisions, listed below, apply where a young person aged between 15 and 18 has committed a punishable offence (Article 89):

- if the young person has particular needs with regard to his or her upbringing, and notably if he or she is very difficult, has been abandoned or is in serious danger, a judicial authority may make an order providing support, or placing the young person with a family

or in a care home. The purpose of support thus provided is to supply the care, upbringing, education or vocational training that the young person requires and to ensure that he or she attends work or instruction regularly and makes sound use of his or her leisure time and any earnings (Article 91);

- the judicial authority may replace this measure with another, subject to having, if appropriate, placed the young person under observation for a period of time (Article 93).

5. Provisions in criminal law

5.1. Classification of forced marriage

Forced marriage is not a specific offence. It may, however, constitute the offence of human trafficking, punishable under Article 196 of the Criminal Code, which provides that:

1 a person who engages in human trafficking to satisfy the desires of others is liable to at least six months' imprisonment;

2. a person who makes arrangements for human trafficking is liable

to imprisonment for a maximum period of five years;

3. in all such cases, perpetrators are also liable to a fine.

5.2. Prosecution in cases of forced marriages

6. Provisions of the law on foreign nationals

7. Policies and approaches

Turkey

1. International agreements

- The Convention on the Elimination of All Forms of Discrimination against Women, which came into force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 20 December 1985 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 4 April 1995 and has been ratified.
- The Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women was signed on 8 Septem-

ber 2000 and ratified on 29 October 2002.

- The Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was signed on 8 September 2000 and ratified on 19 August 2002.

2. Provisions in private international law

3. Provisions in civil law

The *Türk Medeni Kanunu* Code of 17 February 1926 came into force on 4 October 1926 and was amended several times. On 30 January 2002 a new Civil Code, now in force, was adopted to replace it. Articles 118 to 160 cover family law.

This code applies to all Turkish citizens. There is no system of customary law but there are certain traditional practices.

3.1. Marital capacity

Under the new Civil Code, the legal minimum age of marriage is 17 for both men and women. Where there are exceptional and proven reasons for doing so, a court may, however, authorise the marriage of a young person of either sex who has reached the age of 16. In such cases and insofar as possible, the court is required to consult the young person's father, mother or legal guardian (Article 124).

3.2. Consent

Engagement does not create a duty to marry (Article 119).

3.3. Celebration of marriage

In order to marry, the man and woman must go to the registrar of marriages responsible for the area in which one or other of them is resident (Article 134).

With regard to the conclusion of marriages, if the requirements for marriage have not been met or if the documents produced are more than six months old, the registrar of mar-

riages cannot celebrate the marriage (Article 140).

3.4. Annulment of marriage

Two sorts of nullity - absolute and relative - exist.

Absolute nullity

Under Article 145 a marriage can be annulled if it is established:

- that one of the spouses was already lawfully married when the marriage was concluded;
- that one of the spouses lacked legal capacity as a result of a chronic illness when the marriage was concluded;
- that one of the spouses has a mental illness which could seriously compromise the marriage bond;
- that the spouses are within one of the prohibited degrees of relationship defined below.

Under Article 129, the following are prohibited from marrying:

- ascendants and descendants, brothers and sisters, uncles and aunts, cousins;
- a spouse and one of his or her parents-in-law or children in-law, even if the marriage which led to the relationship is over;
- an adoptive parent and an adopted child, or either of them and the other's ex-spouse or children.

In the four cases of nullity set out above, state counsel may initiate annulment proceedings *ex officio*. Any other person concerned may

also lodge an application for annulment.

Relative nullity

Either spouse may apply for annulment of the marriage in the following cases (Articles 148 to 152):

- where he or she lacked legal capacity as a result of a temporary illness when the marriage was concluded (Article 148);
- where he or she has made a declaration of erroneous consent to marriage on the ground either that he or she did not wish to marry or that he or she did not wish to marry the person who became his or her spouse (Article 149);
- where he or she was mistaken about his or her spouse (Article 149/1);
- where he or she was deliberately misled as to his or her spouse's reputation and probity (Article 150/1);
- where he or she entered into the marriage under threat of serious, imminent danger to his or her own life, health or reputation or those of either of his or her parents;
- where one of the spouses concealed a serious illness constituting a real danger to the health of the other spouse and of his or her descendants (Article 150/2).

Where a minor or a person lacking legal capacity consented to marriage, his or her legal representative may apply for its annulment (Article 153).

4. Protection measures

Law No. 4320 on Family Protection aimed at preventing forced marriages and all forms of violence against women entered into force in 1998. It was the first time that a legal definition of "marital violence" was given.

With the aim of combating domestic violence, this law permits victims

to lodge complaints and obtain protection orders. Failure to comply with the law or with a protection measure can be reported to the public prosecutor.

Under the law criminal proceedings can be triggered without it being necessary for the victim to lodge a

complaint. This possibility allows the police and the judiciary to take action in the event of a complaint by a third party, even where the victim has not complained.

5. Provisions in criminal law

A new Criminal Code was adopted on 26 September 2004 and came into force on 1 June 2005. It contains

many specific provisions of relevance to forced marriage.

5.1 Classification of forced marriage

The definitions of "woman" and "girl" have been eliminated as they were discriminatory.



Sexual offences are dealt with under the head of "Crimes against the person".

The concepts of rape and indecent assault under duress have been replaced with the concepts of sexual assault and sexual exploitation of children.

The offence of sexual assault and the circumstances of its commission have been well-defined. Aggravated circumstances exist where the offence involves penetration with an organ, an object, etc.

In the event of a sexual offence with aggravating circumstances resulting in mental or physical harm to the victim, a more severe sentence applies. Where a victim who is in a coma following commission of the offence dies, the penalty incurred is life imprisonment.

Upon lodging of a complaint by the victim an investigation can be opened or criminal proceedings can be instituted. Under the new code rape between partners qualifies as a crime carrying severe penalties. This change in the law is intended to punish marital rape.

Sexual exploitation of children is defined as an "offence against sexual integrity". An aggravated sentence is incurred where the offence is perpetrated by a descendant, an ascendant, a blood relation of the second or third

degree, a step-father, an adoptive parent, a guardian and so on.

The conditions of repentance that lead to suspension of trial proceedings or of a sentence have been well defined. There can be no suspension, reduction or remission of sentence where a person was kidnapped or held against their will and forced into marriage with the accused or convicted person.

Perpetrators of honour crimes incur the maximum penalty for the offence committed. This category of offence was introduced under the article making life imprisonment the penalty for intentional homicide.

Family members or close relatives who kill a woman who has been the victim of a sexual assault on the ground of protecting the family's honour do not benefit from mitigating circumstances.

Deliberately injuring a descendant or ascendant, a spouse, a brother or a sister constitutes an aggravated offence.

The offences of torture and ill-treatment have been grouped together under the head "Torture and ill-treatment", in the light of the obligations resulting from the international conventions to which Turkey is party. In consideration of those obligations, and in particular to prevent violations of human dignity, acts of

torture are considered as a separate offence, with the aim of ensuring that the perpetrators receive appropriate punishment. An aggravated sentence is pronounced where one of these offences is committed against a child, a pregnant woman or a physically or mentally vulnerable person incapable of self-defence. Where a person dies as a result of one of these offences, the perpetrator incurs the penalty of life imprisonment.

Forcing a woman to undergo a gynaecological examination where it has not been ordered by a court or the public prosecutor carries a prison sentence of three months to one year.

Sexual relations with a minor qualify as a separate offence.

All authors of crimes against humanity, including ill-treatment or torture, forcing people to undergo biological experiments, offences against sexual integrity, forced pregnancy and incitement to prostitution, are liable to life imprisonment without any possibility of limitation.

5.2 Prosecutions in cases of forced marriage

Criminal proceedings can be initiated without a complaint being lodged by the victim. This allows persons close to a victim of forced marriage to report the offence and trigger the procedure.

6. Provisions of the law on foreign nationals

7. Policies and approaches

One of the key protection measures for women at risk of violence is the provision of special shelters.

Constant efforts are made to increase the number of shelters. There are currently thirteen shelters managed by the Directorate of Social Affairs and Child Protection at the Prime Minister's Office and eleven managed by various private-sector bodies.

Shelters take in women in the following categories:

- women who have been abandoned following a marital dispute;
- victims of physical violence or sexual or physical assaults;
- women suffering financial hardship;

- women who have successfully overcome problems of drug addiction or alcoholism following specific treatment;
- women rejected by their families because they have given birth to children out of wedlock.

In addition, Law No. 5257 on local government has helped to increase the number of reception facilities, since it requires all municipal authorities to come to the assistance of women and child victims of violence. Municipalities with more than 50 000 inhabitants are obliged to open protection centres.

These municipal measures will help to improve the quality of the protection and support provided to victims.

There is also a telephone hotline (ALO 183), which operates during working hours, which women and children, in particular victims of violence and sexual exploitation, can call for advice on legal procedures, psychological counselling and public-awareness measures.

Some government agencies also operate web-sites, which may be useful to families, women or children in need of information and advice;

- <http://www.aile.gov.tr>
e-mail: aile@ailegov.tr
- <http://www.ksgm.gov.tr>
e-mail: info@kskm.gov.tr
- <http://www.die.gov.tr>
- <http://www.shcek.gov.tr>



United Kingdom

1. International agreements

- The United Nations Convention of 7 November 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which came into force on 9 December 1964 by exchange of letters. The United Kingdom adopted the Convention on 9 July 1970.
- The Convention on the Elimination of All Forms of Discrimination against Women, which came into

force on 3 September 1981 in accordance with the provisions of Article 27, was signed on 7 April 1986 and has been ratified.

- The 1989 United Nations Convention on the Rights of the Child was signed on 16 December 1991 and has been ratified.
- The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement

and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, which entered into force on 1 January 2002, amends the Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors.

2. Provisions in private international law

3. Provisions in civil law

Under Section 1 of the Family Law Reform Act 1969, a person who is not yet 18 years of age is a minor. The concept of emancipation of a minor does not exist in systems of common law. The common-law rules have, however, been modified by case law, establishing that minors enjoy legal capacity to take decisions affecting their personal lives – for example about marriage – provided that they have sufficient intelligence to form their own opinions and understand the implications of their decisions (see Halsbury's *Statutes*).

3.1. Marital capacity

Under Section 2 of the Marriage Act 1949 and Section 11(a)(ii) of the Matrimonial Causes Act 1973, a marriage cannot be contracted if both parties are under 16 years of age. In the case of parties aged 16-18 the consent of a legal representative is required. If consent is refused without good reason, or cannot be obtained, a court ruling may be sought.

3.2. Consent

Under common law, both spouses must consent freely to become man and wife.

Section 12 of the Matrimonial Causes Act 1973 provides that consent must not be vitiated by any factor such as violence.

3.3. Celebration of marriage

Intending spouses must present themselves at a registry office with identity documents attesting their

ages in order to obtain a marriage licence – i.e. a civil-status authorisation for two individuals to marry.

A marriage may be celebrated according to the rite of the Church of England, in the presence of a member of the clergy and between 8 am and 6 pm, following the ceremony set out in the official liturgy. At least two witnesses are required. Three formalities precede the ceremony, namely publication of the banns, issue of a marriage licence and receipt of a registrar's certificate.

Marriages may also be celebrated according to non-conformist rites on condition that the building used meets certain legal stipulations and that a certificate or licence has first been duly obtained. A registrar need not be present at the ceremony.

Marriages celebrated according to the rites of Judaism or certain other religions are also permitted. In such cases a registrar's certificate must be presented before the ceremony. Quaker marriage may be celebrated in any meeting place, even if it lies outside the territory of the registry responsible, and the same applies to Jewish marriage.

Civil marriage is another option – in the registrar's office in the presence of two witnesses. The spouses will be questioned about their intention to contract the marriage, and a certificate is required. Purely civil marriage is common nowadays. It is a fully effective procedure in itself and no religious ceremony is necessary.

3.4. Annulment of marriage

Actions for annulment of marriage are of two types depending on whether the marriage in question is void or voidable. In the case of a void marriage, the parties are entitled to disregard the marriage entirely without any need to apply to a court. A voidable marriage, on the other hand, is valid in all respects until it is pronounced void by a court. Decisions of nullity do not have retrospective effect. In the case of a void marriage, any interested party may bring an action for annulment. In the case of voidable marriages, only the spouses are entitled to do so.

A marriage is automatically void if one of the spouses lacked marital capacity, if there was a failure to meet formal requirements, if there is a prohibited degree of kinship between the spouses, or if the marriage was contracted while one of the spouses was already married. This means that any marriage involving at least one spouse aged under 16 is void. The rule applies to any person domiciled in the United Kingdom and to his or her spouse, irrespective of where the marriage was celebrated. An action for annulment can be brought by any person with an interest in doing so. Failure to meet the formal requirements renders a marriage absolutely void. A marriage is not invalidated, however, by absence of parental consent where one of the intending spouses is a minor.

Vitiated consent renders a marriage voidable.



4. Protection measures

New legislation passed in the UK in 1996 gave increased civil-law protection to victims of domestic violence.

In England and Wales, victims are entitled under Part IV of the Family Law Act 1996, which came into force on 1 October 1997, to apply to a civil court for sole occupation of the matrimonial home (an occupation order) and an order that the domestic violence stop (a protection order).

If a victim is in real danger or is likely to discontinue proceedings against the aggressor, the court may make this type of order without giving the aggressor prior notice.

The Family Law Act applies irrespective of the nature of the ties between aggressor and victim. Its provisions differ to some extent, however, according to whether the case involves married or engaged couples, for example.

A victim may be given sole occupancy of the family home even in the absence of any legal right of ownership or tenancy. The court will take its decision on the basis of the circumstances in the case, and has a large measure of discretion: it may divide the accommodation, awarding sole occupancy of part of it to the victim, may require the aggressor to leave the premises, or may bar the aggressor from the area in which the home is situated. This type of court order is valid for six months but may be extended for further periods of six months, the number of extensions depending on the respective partners' rights to the home. If one of a

couple has rights to the home, the court may, for example, make the occupation order conditional on the payment of rent by the spouse occupying the home to the spouse who has rights to it.

In the first year of operation of these provisions, British courts made 9 000 occupation orders.

The scope of protection orders varies widely and courts also have discretion with regard to their duration. They may impose very minor restrictions such as barring a perpetrator from telephoning a victim, or may be much more generally prohibitive.

Since the current provisions for protection orders came into force, the Ministry of Justice has been evaluating their effectiveness. In the first year of application of the legislation, courts made 19 000 such orders.

A court may stipulate that any failure to comply with a protection order will incur immediate arrest, without need for a warrant.

With regard to the protection of minors, the key principle is that of child welfare. Article 1 of the Children Act 1989, for example, provides that the child's interests are the main factor a court must take into account in deciding issues concerning children.

In accordance with the principle that the welfare of the child comes first, the Children Act introduced a change of terminology: the law now refers to parental responsibility rather than parental rights. The Act itself does not define the substance of

parental authority, which is derived from case law. Further to Section 35 of the Education Act of 1944, it has been interpreted as implying that parents are entitled to care, custody and possession of the child and have a duty to ensure that he or she receives appropriate full-time education between the ages of 5 and 16 years.

Under the Supreme Court Act 1981, the High Court may make a legal guardianship order if it is in the child's interests to do so. This implies that the High Court assumes general responsibility for the child's interests while placing him or her under the physical protection and control of a specific individual or a local authority.

Local authorities are required, under Section 47 of the Children Act 1989, to provide accommodation for children who are in serious and immediate danger.

A child under 16 may be the subject of a care, supervision or protection order. In such cases the child may be removed from the family home. Under Section 32 of the Children Act, this is done in response to an application by the authorities if the child has suffered, or is at risk of, substantial harm.

Under Section 44, emergency protection orders can be made in respect of any child believed to be at risk of substantial harm if not transferred immediately to a place of safety. Orders of this type are for a maximum of eight days, with provision under Section 45 for extending them.

5. Provisions in criminal law

5.1. Classification of forced marriage

There is no specific offence of forced marriage. Common law in respect of criminal offences does, however, include provisions that can form a basis for penalising the practice, albeit not directly but rather through prosecution for other offences (which can also occur outside forced marriage).

These include sexual offences, which are covered by the Sexual Offences Act 1956. In addition, there is specific legislation on indecent

assaults against children, the Indecency with Children Act 1960. More recently, in November 2003, Parliament adopted a new Sexual Offences Act.

The offence of rape depends on absence of victim consent. In the case of a male perpetrator it means having sexual intercourse with a woman, or another man, who does not consent to it.

The new Act extends the definition of rape, which now includes acts of fellation. It also creates an offence of assault by penetration other than

with the penis, i.e. by any means including with objects. Perpetrators of this offence may be male or female.

The law makes an irrebuttable presumption of non-consent in the case of minors aged under 13. The maximum penalty in such cases is life imprisonment.

If the victim is aged between 13 and 16 years the maximum penalty is 14 years' imprisonment.

Another form of sexual offence is intentional sexual touching of another person without that person's



consent. Here again there is an irrebuttable presumption of non-consent in the case of minors aged under 13.

Sexual offences that do not involve the use of threats or violence are covered by Section 9 of the Act, "Sexual activity with a child". This section makes it an offence to engage in sexual intercourse with a minor aged under 16, even with the minor's consent.

There is, however, a possible defence in such circumstances if the minor was aged between 13 and 16 years, and the accused thought that he or she was 16 or over and could not reasonably have believed otherwise.

Penalties for such offences vary according to the nature of the sexual act involved.

There is an irrebuttable presumption that rape was committed if the victim was under 13.

Sections 8 and 10 of the Act cover the offence of causing or inciting a child to engage in sexual activity. Section 8 applies to minors under 13 years of age, while Section 10 relates to minors aged 13 to 16. These provisions constitute a basis for prosecuting persons who cause or incite a minor (successfully or otherwise) to have sexual relations with a third party or with the perpetrator. They also cover the case of a minor being

caused to perform a sexual act on himself or herself, or even just undress.

Penalties vary according to the nature of the sexual act and the attempt to incite, as well as the victim's age.

This legislation can be used to prosecute parents.

It is not necessary for a victim to make a complaint in order for criminal proceedings to be instituted. Under ordinary law, any member of the public is entitled to initiate a prosecution (although, as rule, it is the police who do so). In practice this aspect of the law is very useful with regard to forced marriages as it enables members of the family of a victim of forced marriage to set the criminal justice process in train.

The maximum penalty for sexual assault is life imprisonment.

Acts of violence between partners do not constitute a specific offence. They are often classed as intimidation or assault. Ordinary law is applicable in such cases but the judge, who enjoys a large measure of discretion, can take into account the links between aggressor and victim in determining the sentence. Violence between partners may thus lead the courts to impose heavier sentences. Marriage is regarded as a circumstance aggravating the offence.

Violence within marriage may also come under the scope of legislation passed in 1997 providing protection against harassment, which has been defined as an offence in the following terms: "a person whose course of conduct causes another to fear on at least two occasions that violence will be used [...] against him is guilty of an offence".

Since the early 1990s the courts have handed down convictions for rape between partners, but there have been very few such cases. Some judges take account of length of marriage as a potential mitigating factor. In October 1999, for example, the fact that a man who had raped his wife had been married to her for 17 years was deemed sufficient ground for sentencing him to just two years' imprisonment.

The fact that rape within marriage can thus be punished offers scope for penalising forced marriages even if the length of the marriage is treated as a mitigating circumstance.

5.2. Prosecutions in cases of forced marriage

No complaint from the victim is needed for a perpetrator of violence to be prosecuted. Anyone with a knowledge of facts suggesting that an offence has been committed is at liberty to report them.

6. Provisions of the law on foreign nationals

Family reunification is not an entitlement for any family members. All reunification measures are subject to administrative permission.

Anyone who is the spouse of a foreign national lawfully resident in the United Kingdom may apply to benefit from family reunification. In order to obtain administrative authorisation the applicant must be over 16. Further requirements are that the spouses should have met one another, should intend to live permanently together and should be capable of providing for themselves without resort to public funds, i.e. they should not be dependent on any non-contributory social benefit.

The foreign national resident in the UK must have accommodation suitable for the family members and must be capable of meeting their

needs without resort to certain social benefits.

The spouse will be granted a residence permit valid for one year. At the end of that period the couple must again prove the authenticity of their marriage, and a permit of unlimited duration may then be granted.

Before 1 January 1983, when Section 6 and Annex 1 of the 1981 British Nationality Act came into force, women who married British citizens automatically obtained British nationality.

Now, however, spouses of British citizens, of either sex, can obtain nationality only through naturalisation, although the requirements for naturalisation are less restrictive for spouses than for other foreign applicants: the foreign spouse must have a

sound reputation and must be lawfully resident in the UK. Foreign nationals with a criminal record must wait for between six months and ten years from the date of their conviction before applying for naturalisation. Persons who have been sentenced to imprisonment for more than two-and-a-half years are not eligible for naturalisation. Spouses of British citizens are required to meet only two conditions: they must intend to establish their main residence in the UK and must have a sufficient knowledge of English.

A bill on nationality, immigration and asylum has proposed the further condition that applicants should have sufficient knowledge of life in the UK.



Naturalisation does not require renunciation of the applicant's original nationality.

Spouses of British citizens may apply for naturalisation after three years' residence in the UK. During that period they may be absent from the country for a total of 270 days, but not for more than 90 days annually.

Even if they are married to British citizens, applicants must be sponsored by two other British nationals aged 25 or over, who can vouch for

the applicant's morality, are not directly related to him or her and have not been convicted of a criminal offence in the previous ten years.

Applicants must submit a naturalisation form to the Home Office Immigration and Nationality Directorate. Administrative authorities or the police may call applicants for interview and request additional information.

Applications may be rejected without the grounds for rejection being

stated. Decisions may not be appealed.

Naturalisation only becomes definitive when the successful applicant has taken an oath of allegiance to the Queen. The bill on nationality, immigration and asylum under consideration at the time of writing proposes the further condition of a commitment to basic United Kingdom values. The oath would be taken and the commitment made at a formal ceremony.

7. Policies and approaches

Since 1979, victims of marital violence have no longer been excluded from entitlement to the financial support payable to the victims of crimes of violence generally – as provided for in the 1995 Criminal Injuries Compensation Act.

Victims receive financial support only where the perpetrator of the violence has been prosecuted and the victim has ceased to live permanently with the perpetrator.

The support, which is paid by an independent ad hoc body known as the Criminal Injuries Compensation Authority, takes the form of a one-off sum, the amount of which is determined according to an official scale. It may be paid to cover exceptional expenses (such as the cost of work to the home).

If a victim has to stop work for more than 28 weeks as the result of an attack, compensation for loss of earnings may be payable from the 29th week.

In 1990 the Home Office issued a circular encouraging police forces to set up specialist units at police stations, to which victims of marital violence could turn for help. Women are entitled to request that they be dealt with by a female police officer.

The 1996 Housing Act, which came into force on 1 January 1997, places a duty on local authorities to provide accommodation for persons

in need of help, notably women who have left the marital home. The local authority is required to provide accommodation in such situations for a period of two years. In most cases, people who need emergency accommodation are placed in hostels or shelters for a few days while the local authority considers their circumstances and tries to find housing for them.

In general the Home Office encourages all initiatives, private or public, that are designed to combat marital violence. There are 400 shelters in England and around 50 in Wales, and several telephone help lines are open 24 hours a day. There are 200 multidisciplinary groups representing the main administrative authorities and associations concerned. Information campaigns are organised and GPs receive special training in recognising the signs of marital violence.

A central role is played by the government's Joint Action Plan, and by the Community Liaison Unit of the Foreign and Commonwealth Office, which deals with some 200 cases a year.

Social services and the police have an essential function in applying practice guidelines.

The Home Office monitors the phenomenon of forced marriages, and it published an updated report on

the situation in 2000. It also explores solutions to the problem: the report recommends that forced marriage should no longer be dealt with as a family issue but rather as a breach of the law. It should be reported to the police, and parents could then be charged with kidnapping, domestic violence or child abuse.

In January 2001, the Home Office Immigration and Nationality Directorate funded a project to crack down on forced marriage, as a result of which 240 cases were resolved and 60 girls who had been held in the country against their will were repatriated.

Associations also play an important role. Anti-Slavery International, for example, founded in 1839, lobbies states in which slavery still exists to bring forward measures to end it (and it defines forced marriage as a form of slavery). It promotes research and works with local organisations to raise awareness of the problem.

Other associations working in the field are Southall Black Sisters, a group that defends single women's rights and handles some 200 cases annually, and Reunite which works to combat forced marriage.

In March 2002, a video was produced to raise awareness among 12- to 18-year-olds of the problem of forced "marriages".

