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FORCED MARRIAGES AND HONOUR KILLINGS

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ΕΒΡΟΠΕΪΣΚΙ ΠΑΡΛΑΜΕΝΤ ΠΑΡΛΑΜΕΝΤΟ ΕΥΡΟΠΕΟ ΕΥΡΟΠΣΚΪ ΠΑΡΛΑΜΕΝΤ ΕΥΡΟΠΑ-ΠΑΡΛΑΜΕΝΤΕΤ
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**Directorate-General for Internal Policies
Policy Department C
Citizens' Rights and Constitutional Affairs**

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Executive Summary:

This report aims at providing a comparative analysis of the ways in which forced marriages and honour killings are framed in the laws and practices taking place across the different Member States of the EU as well as in a selection of neighbouring countries. While statistical data on forced marriages and honour killings is often scarce, this report shows that these practices can be indeed found in a number of countries. At times of carrying the comparative analysis the legal context requires specific attention, not least for defining forced marriages but also for looking at the various steps which are taken to counter this phenomenon. Forcing someone to marry is a specific crime only in few EU Member States' legal systems. Protection against forced marriage is however provided in a number of Member States by a broad range of activities including marriage law, immigration law, counselling, media presence and cooperation with civil society. When looking at the circumstances surrounding forced marriages, it appears that forced marriage has roots in traditional-patriarchal family structures, low-income situations and lack of education – not in a specific culture or religion. Further, existing data suggest that forced marriage can some times result in honour killings. The report also addresses the ways in which these domains are being addressed at EU level, as well as the limits and potential for future EU action.

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The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

TABLE OF CONTENTS

1.	Introduction	- 1 -
2.	The Case and Consequences of forced marriages: Setting the scene.....	- 2 -
3.	A European Union Challenge?	- 4 -
4.	Speaking about forced marriage	- 6 -
4.1	Different conceptual understandings of forced marriages	- 6 -
4.2	Examples on national interpretations of the concept	- 7 -
4.3	Defining forced marriage for the purpose of this study	- 8 -
5.	Forced Marriages: A survey of the data	- 9 -
5.1	Data in the United Kingdom	- 9 -
5.2	Data in Germany	- 10 -
5.3	Data in Switzerland	- 12 -
6.	Legal standards	- 12 -
6.1	Relation between forced marriages and member states' obligations under international and European human rights law	- 12 -
6.2	Forced marriages and criminal law.....	- 14 -
6.2.1	A comparative account.....	- 14 -
6.2.2	The pros and cons of criminalizing forced marriages	- 17 -
6.3	Other national initiatives.....	- 18 -
6.3.1	The United Kingdom.....	- 19 -
6.3.2	Denmark	- 20 -
6.3.3	Germany	- 21 -
6.3.4	Other member states.....	- 22 -
6.4	Forced marriages and civil law: marriage law in progress.....	- 23 -
7.	The case of Roma: marriages and discrimination.....	- 28 -
7.1	A variety of Roma marriage customs	- 28 -
7.2	Member States policies on Roma marriages	- 30 -
8.	The Social Dimension and the Role of Education.....	- 34 -
9.	Honour Killings: A Survey on Data.....	- 37 -
9.1	Dilemmas in conceptualising honour killing.....	- 38 -
9.2	Data on honour killings.....	- 38 -
9.3	The case of Turkey	- 41 -
10.	The Role of Citizenship, Integration and Asylum at times of responding to Forced Marriages and Honour Killings	- 43 -
10.1	Forced marriages and citizenship	- 43 -
10.1.1	Cross country comparison	- 43 -
10.1.2	The Role of the European Convention on Nationality	- 46 -
10.2	The role of integration at times of responding to forced marriage and honour killing... - 46 -	
10.3	The role of asylum at times of responding to forced marriage and honour killing	- 47 -
11.	Conclusion and Recommendations.....	- 48 -
	Annex 1. References	- 50 -
	Annex 2. Status of ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.....	- 63 -
	Annex 3 Tables on Cross-State Comparison of applicable Legal Frameworks.....	- 50 -

1. INTRODUCTION

Forced marriage and honour killing are two different, distinct topics. Each of them constitutes a social and personal disaster of its own. They often occur separately and are not necessarily linked with one another. However, both seem to be a consequence of cultural, religious or social circumstances. Also, the attempt to force someone into marriage can result in honour killing. The study provides– from a legal perspective – explanations about how these two topics are linked with each other. Further, and on the basis of the specifications provided by the European Parliament (DG for Internal Policies), the report intends to address the following specific questions:

- What are the official data for these types of marriages across the European Union (EU) Member States?
- To what extent are the main features of marriage laws across the EU effective at times of limiting the recognition of forced marriages?
- How do young women get forced into marriage? Does the couple remain in the country of origin, or do they come back in one European Member State after the celebration of the marriage?
- What is the extent of the problem across the EU Member States of 'unwilling sponsors' to bring a spouse through family reunification into the EU following a forced marriage?
- What might be the reasons why some communities living within the EU still resort to forced marriages? To what extent is the phenomena of forced marriages and honour killing linked to the social situation of the minorities concerned? What are the consequences of forced marriages on the young women: psychological, physical....?
- What is the procedure for marriages within the Roma communities in the Member States?
- In which EU Member States is forced marriage a specific offence or crime, and if so, what is the penalty? What do Member States do from a legal point of view in order to stop and/or prevent this kind of offence/crime?
- Do Member States have data on honour killings and what do they intend to do to put a stop to honour killings?
- Would more effective integration policies curb down or have an impact on the number of forced marriages?
- Is the phenomena (of forced marriages and honour killing) linked to the social situation of the minorities concerned?
- To what extent can the nationality of naturalised persons be revoked according to nationality rules across the 27 EU Member States in the event of such acts to enable states to expel such perpetrators?

Where appropriate, the study addresses these questions jointly and gives answers showing the extent to which these issues might relate to each other. While the study mainly concentrates on the Member States of the EU on the basis of the existence of the necessary data, it also covers, where relevant, the cases of Switzerland, Norway, Croatia, Bosnia-Herzegovina, Serbia, Macedonia, Albania, and Turkey. After providing a short induction into the theme of forced marriages, the potential EU competence on the matter is assessed. Section four then addresses some factors to be kept in mind when speaking about forced marriages, in particular when looking at the various definitions that are commonly used when referring to this phenomenon.

Available statistical data is then presented in order to offer a quantitative representation of its prevalence. Then, the report moves into the examination of the main legal issues at stake in this debate. In fact a large part of this study is dedicated to a comparative account of the legal responses existing in the different EU Member States in the context of criminal law, civil law on marriage or other normative and social initiatives (Section six). Section seven then addresses the specific case of Roma marriages. This community has been often been stigmated as strong promoters of these practices. The social dimensions and the role of education are thereafter highlighted in Section eight. Section nine then looks at the case of honour killings and the links it may have with forced marriages. Finally, the role of integration and asylum policies when responding to these two practices is examined.

2. THE CASE AND CONSEQUENCES OF FORCED MARRIAGES: SETTING THE SCENE

Throughout the EU there are numerous testimonials from victims of forced marriage. Many more victims do not speak out, often because of shame or fear.

A recent study conducted by Nazia Khanum¹ on forced marriages in Luton in the UK, ('The Luton study') reports a statement by a victim of forced marriage. The statement illustrates the complexity and widespread pain of forced marriage situations:

The only reason my parents went ahead with this marriage was because my dad had given his word to my Grandmother who had arranged it when I was 1 year old. At one point a few years previous my dad had begged his mother to break this arrangement but she threatened to disown him if he dared. He felt compelled to do as his mother said. What hurt me was that my family didn't like the guy they were marrying me to yet they were ready to give me away to him. No one had the courage to fight for me and do the right thing. I was so alone. ... During the ceremony my dad burst into tears, he screamed at his mother in front of everyone saying that she had made him give his daughter away to his enemy. I couldn't believe that the parents who claimed to love me had thrown me away just like that. Words cannot explain how I felt. ... When I came back to England my parents kept apologising and asking for forgiveness but they said there was nothing I could do now and that I had to make my so-called marriage work. ... Sometimes I hate my parents for what they did to me but I feel guilty for feeling like that. But I know I will never ever stop loving my parents and I do forgive them for everything they have done because I know that had our community been different my parents would not have done what they were forced to do to me.

The UK Forced Marriage Consultation² reports on the following case:

S (female), a 16-year-old British national of Bangladeshi origin was bright with a good record at school until 14-years-old. From that stage, her motivation for school work decreased, she began to truant and was increasingly withdrawn. Marks on her wrists and back raised concerns of self-harm and violence. Teachers referred her to the school counsellor and the school nurse. S maintained that it was a family generational clash and was anxious that no one should talk to her parents as this would "make things worse". After GCSEs the girls were supposed to attend school for various formalities about moving up to the sixth form or career advice, etc. S. did not turn up for these classes. A teacher contacted the family. They said the whole family had gone to Bangladesh to see a sick relative, which S. liked it a great deal and seemed to be in love with someone there, so she had stayed when the others came back. They said they wouldn't be surprised if she got married and stayed out

¹ Nazia Khanum, "Forced marriage, family cohesion and community engagement: National learning through a case study of Luton", March 2008, *Equality in Diversity*, p. 9 (<http://www.luton.gov.uk/Media%20Library/Pdf/Chief%20executives/Equalities/Forced%20Marriage%20Report%20-%20Final%20Version.pdf>).

² <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf>

there for quite a while. The teacher contacted FMU fearing that this may be against S's wishes. FMU liaised with various parties to try to locate her family address overseas and the victim was made a ward of the High Court which required that she be produced at the British High Commission for them to interview her and offer her assistance. She came and was interviewed alone. It transpired she was already married and had consummated the marriage. She did not appear happy but did not state that she had been forced and clearly did not wish to cause trouble for her family. She said that she was due to come back to the UK the following week to apply for her husband so no need for an emergency repatriation. Back in the UK, she ran away from home and went to a refuge from where she phoned FMU. She said she had been raped but that she had not felt able to say that earlier and did not want trouble for her parents. She explained that she had for 3 years known there was a risk of forced marriage at the age of 16 but she didn't know who to turn to or who to trust and was embarrassed and frightened both for herself and her family. She explained that one day she had returned from school, had had tea and fallen deeply asleep. When she woke up she was at the airport and did not know what was happening but before she knew it the whole family were boarding a flight to Bangladesh. She was told it was an emergency as their father's mother was on her deathbed. On arrival she was locked up, everything taken from her, she suffered intense emotional pressure and some physical abuse and was made to understand that she could only return to the UK once married. She had said 'no' throughout, including at the ceremony, but this had been entirely disregarded by everyone. She was considering getting a divorce or annulment.

As illustrated by the preceding examples, perpetrators of forcing someone to marry are usually parents or family members and can also include **members of the extended family**, potential in-laws and husbands, but also members of the community. As the **German Bundestag** has indicated,³ **in the majority of cases, girls and young women are the victims of being forced into marriage.** They are forced into marriage and their objection is either ignored or they do not dare to oppose the marriage, because parents, family, fiancé and parents-in-law put pressure on them with a variety of means. This pressure entails physical and sexual force, constraint by threat, locking away, abduction, mental and social pressure and emotional blackmailing, restrictions in way of life and freedom of movement as well as other degrading and controlling actions. In most severe cases this can include honour killing.

Many potential medical consequences of forced marriages are reported, including early pregnancy, HIV infection, Hepatitis B and other sexually transmitted diseases which can be contracted more easily in defloration.⁴ It has been reported that girls or young men involved may suffer psychological troubles such as sleep problems (including nightmares), eating disorders such as anorexia and bulimia, behavioural difficulties including irritability, loss of interest in school, running away and drug addiction. Various somatic disorders are also reported, notably abdominal pain; individuals may lapse into severe depression that may lead to suicide.⁵ Women who have been forced into marriage report that they have experienced life within marriage as a series of rapes.⁶

³ German Bundestag, BT-Drs. 16/1035.

⁴ See Edwige Rude-Antoine, "Les mariages forcés en Belgique, en France, en Italie et en Suède", *Sociologia del diritto*, 2006, p. 105.

⁵ See Edwige Rude-Antoine, *Forced Marriages in Council of Europe member states: A Comparative Study of Legislation and Political Initiatives*, study prepared for the Council of Europe, Strasbourg ([http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG\(2005\)1_E.pdf](http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG(2005)1_E.pdf)).

⁶ See Heiner Bielefeldt and Petra Follmar-Otto (eds), *Zwangsverheiratung in Deutschland*, Bundesministerium für Familie, Senioren, Frauen und Jugend, 2007, p. 14 (<http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/>).

Further, there is the obvious danger of **violations of rights of education and profession** for the young women forced into marriage. In Germany, victims of forced marriage predominantly are minors. Often, the difference in age between them and their husband is considerable. Cases have been reported in which 16-year-old girls have been sold for a couple of thousand euros to elderly men. These girls have to leave school in order to care for their husbands. It is difficult for these young women to find a way out of that marriage, because their family and their husband control them or at times even lock them up at home. They often do not know whom to turn to and where to find help. They are afraid that their 'disobedience' will be punished, because they have violated the honour of the family. If the women have already attained majority, they can flee to shelter homes for women. If they are still minors, however, this is difficult, because there is a lack of such facilities for 12-16 year-olds. Many girls, therefore, succumb to their fate because of helplessness or out of solidarity with their mothers and sisters. They are afraid of losing their family and fear the aggression of their father and male relatives. Suppression, sexual infringements and violence often result in **physical and mental illness**. The Berlin aid organisation Papatya reports that 68% of the city's victims of forced marriage are minor girls. 30% of the young women speak of suicide. 80% of those who looked for help from Papatya had been ill-treated or misused.⁷

In addition, **forced marriage affects not only women but also men**. While these spouses are often the ones benefiting from the forced marriage, fitting into their perspective of correct behaviour and supporting their position of power in the family, reports also say that about 15% of minors who are forced into marriage are male.⁸

3. A EUROPEAN UNION CHALLENGE?

The EU has taken up the challenge posed by forced marriage and honour killings in a variety of institutional and policy contexts.

The European Parliament constitutes an active institutional actor in these fields and among those been most aware of the complex legal contextualization within which this issue may be addressed. As a way of illustration, it has expressly highlighted the problems in the Resolution on the situation of women from minority groups in the EU,⁹ and has continued to do so in the Resolution on the current situation in combating violence against women and any future action.¹⁰ In this later the European Parliament expressly called for men's violence against women (in all its cultural and social forms)¹¹ to be considered as a violation of human rights. The issue was also raised in the Resolution on the links between legal and illegal migration and integration of migrants,¹² the Opinion on the Policy Plan on Legal Migration,¹³ and

[Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung- 20Forschungsreihe-Band 201_property=pdf,bereich=,sprache=de,rwb= true.pdf](#)

⁷ See BT-Drs. 16/1035, p. 6.

⁸ *Spiegel*, 25 March 2008 (<http://www.spiegel.de/panorama/0,1518,542806,00.html>).

⁹ Resolution on the situation of women from minority groups in the European Union (2003/2109(INI)), 9.03.2004

¹⁰ Resolution on the current situation in combating violence against women and any further action (P6_TA (2006)0038) 02.02.2006

¹¹ According to Resolution (P6_TA (2006)0038 "the types of violence affecting women can vary according to cultural tradition, ethnic origin, and social background; whereas female genital mutilation, so-called crimes of honour, and forced marriages are a reality in the EU."

¹² Resolution on the links between legal and illegal migration and integration of migrants (2004/2137(INI)), 09.06.2005

¹³ Opinion on Policy Plan on Legal Migration, Opinion of the Committee on Women's rights and gender equality (2006/2251(INI)), 17.09.2007

the Women's Committee Resolution on gender equality and women's empowerment in development.¹⁴ The Briefing Paper on Honour Killing highlights important demands for further action.¹⁵

Similarly, consciousness has been expressed by the European Commission in its Communication on 'A Roadmap for Equality between Women and Men',¹⁶ and by the Council in the Framework Decision on 'Combating Trafficking in Human Beings'.¹⁷ Furthermore, the three DAPHNE programmes have established a specific programme to prevent and combat violence against children, young people and women, and to protect victims and groups at risk.¹⁸ Under this financial framework, several European projects have been funded since 2000, some specifically addressing the issue of forced marriages and honour killings. This is in particular the case of the projects Papatya,¹⁹ Shehrazad,²⁰ and Nonamus.²¹ One of the outcomes of the Shehrazad project was to produce a Plan of Action in which Member States were advised to address "the issue from a human rights perspective, while underlining the importance of cultural dialogue and integration in addressing honour-based violence."²²

As illustrated by the high number of different policy, legal and financial instruments which have been already used to address the issue of forced marriages, the European approaches to tackling forced marriages are extremely varied. In fact it has, over time, considered it as an issue related to several distinctive domains. Among those, we can identify: gender-based violence (Article 3.1 of the Charter of Fundamental Rights), human rights (Article 6 of the Treaty on European Union and Article 23 of the Charter of Fundamental Rights), as well as anti-discrimination and gender equality (Article 13 of the Treaty establishing the European Community and Article 21 of the Charter of Fundamental Rights). Indeed, forced marriages and honour killings both call for appropriate action related to gender-based violence, the promotion of gender

¹⁴ Women's Committee Resolution of 13 March 2008 on Gender Equality and Women's Empowerment in Development Cooperation (2007/2182 (INI)) 13.03.08.

¹⁵ Jane Hailé, Honour Killings, Its Causes & Consequences: Suggested Strategies for the European Parliament, Briefing paper for the European Parliament, 20 December 2007 (<http://www.europarl.europa.eu/activities/expert/eStudies.do?languageEN>).

¹⁶ European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - A Roadmap for equality between women and men 2006-2010 {SEC(2006) 275}.

¹⁷ Council of the European Union, Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (OJ L 203, 01.08.2002).

¹⁸ DAPHNE programme as part of the General Programme "Fundamental rights and Justice", Decision No 293/2000/CE (DAPHNE I), 803/2004/EC (DAPHNE II), Decision No. 779/2007/EC from the EP and the Council establishing a specific programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk (OJL 173, 03/07/2007) http://ec.europa.eu/justice_home/funding/2004_2007/daphne/funding_daphne_en.htm

¹⁹ This is an ongoing project. Its description can be accessed through <http://www.papatya.org/>

²⁰ Project 2003-048-WYC: SHEHRAZAD: Combating violence in the name of honour, coordinated by Kvinnoforum-Foundation of Women's Forum Sweden. Description available at http://ec.europa.eu/justice_home/daphnetoolkit/html/projects/dpt_2003_048_wyc_en.html

²¹ Project 2005-1-226-W: NONAMUS, Rights belong to every woman, coordinated by Turun Naiskeskus-Yhdistys Ry, description available at http://ec.europa.eu/justice_home/daphnetoolkit/html/projects/dpt_2005_1_226_w_en.html

²² "One of the main products of the project's final conference was the adoption of a Plan of Action to Combat Honour-Based Violence in Europe. This was adopted and introduced at the highest political levels in Sweden and participating countries. It highlighted the importance of addressing the issue from a human rights perspective, while underlining the importance of cultural dialogue and integration in addressing honour-based violence. It reconfirmed a commitment to actively working to mitigate violence against women in general, and honour-based violence in particular, serving as a sustainable instrument for further advocacy at European level." http://ec.europa.eu/justice_home/daphnetoolkit/html/projects/dpt_2003_048_wyc_en.html

equality and the prohibition of discrimination, as well as social inclusion. Furthermore, it is of course related to the human rights to freedom, dignity, physical and emotional integrity. Any relevant legal basis for the EU to legislate in these fields depends on the material and personal scope around which these issues would be addressed. Two thematic areas could legitimise EU competence: First, the domain of non-discrimination and human rights; Second, as it will be argued in Sections 10.2 and 11 below, when this domain has been addressed as part of the promotion of social inclusion, the role that the EU could play in this regard in relation to integration policies can be considered of special relevance.

Here, Article 63.3 of the Treaty establishing the European Community would constitute the appropriate legal basis for EU action as recognized by the Council Decision 2007/435 establishing the European Fund for the Integration of Third-Country Nationals.²³ This provision requires the Council to adopt measures on the “conditions of entry and residence (...) including those for the purpose of family reunion”. The Treaty of Lisbon signed on 13 December 2007,²⁴ whose future is at present at stake after the ‘no-vote’ resulting from the Irish referendum of 12 June 2008, is deemed to have major implications in the area of integration of third country nationals. The Treaty would contain an express legal basis in the Treaty on the Functioning of the European Union (TFEU) to promote the integration of legally resident immigrants. Article 79.4 which states that “The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third country nationals, residing legally in their territories, excluding any harmonization of the laws and regulations of the Member States.”²⁵ European cooperation on integration of third country nationals would therefore benefit from the co-decision procedure, something that would ensure a stronger role for the EP in the decision making processes (democratic accountability) as well as the achievement of more coherent policies.²⁶

4. SPEAKING ABOUT FORCED MARRIAGE

4.1 Different conceptual understandings of forced marriages

Many different definitions of the term ‘forced marriage’ have been used. A Council of Europe study on Forced Marriages in Council of Europe Member States of 2005 presents a rather broad definition according to which the latter constitutes 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 shame marriage, marriage of convenience, unconsummated marriage, putative marriage, marriage to acquire

²³ Council Decision establishing the European Fund for the Integration of Third-Country Nationals for the Period 2007 to 2013 as part of the General Programme “Solidarity and Management of Migration Flows”, 2007/435/EC, 27 June 2007, OJ L 168/18, 28.6.2007.

²⁴ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, 2007/C306/01, OJ C306/01, 17.12.2007.

²⁵ S. Carrera (2008) states in “In search of the perfect citizen? The intersection between integration, immigration and nationality in the EU”, Wolf Legal Publishers: Nijmegen: *“The role of the EP and national parliaments would also be strengthened in comparison to the present state of affairs. The EP is still not sufficiently involved in the decision-making processes covering the area of integration.”*

²⁶ S. Carrera and F. Geyer (2008), *The Reform Treaty and Justice and Home Affairs: Implications for the Common Area of Freedom, Security and Justice*, in E. Guild and F. Geyer (eds), *Security versus Justice? Police and Judicial Cooperation in Criminal Matters*, Ashgate Publishing: Hampshire, pp. 289-308.

nationality and undesirable marriage – in all of which the concept of consent to marriage is at issue”.²⁷ Another definition that has been used in the Council of Europe understands forced marriage as the union of two persons at least one of whom has not given their full and free consent to the marriage”.²⁸

For some, arranged and forced marriage are equally an expression of authoritarian structures of family that violate free self-determination,²⁹ since the term “arranged marriage” can be used as covering pressure and violence by the family. It has been also argued that the distinction between forced marriage and arranged marriage is of little relevance for gay or lesbian individuals, because the family – and societal – focus on heterosexual marriage for them can result in coercion.

The study carried out by Khanum on “Forced marriage, family cohesion and community engagement: National learning through a case study of Luton” (here and after the Luton study)³⁰ takes an even broader approach when it comes to the prevention of love marriages and sexuality. As to the prevention of love marriages it is considered that preventing somebody from marrying is as great a violation of their human rights as forcing them to marry, especially if it is accompanied by violence. It is reported that some ‘honour killings’ target men who are deemed unsuitable by the girl’s family, while some marriages are forced in order to prevent a love-match. It is thus suggested that preventing marriage should be considered a form of forced marriage. As to sexuality there are critical issues reported relating to the rights of gay men, lesbians, bisexuals and transgendered people within a number of minority communities in the United Kingdom. In some cases marriage may be forced in order to ‘straighten out’ young people who are not heterosexual.

More narrowly, forced marriage has been defined as a marriage “where people are coerced into a marriage against their will and under duress”.³¹

The **United Kingdom Forced Marriage Unit** defines a forced marriage as “a marriage conducted without the valid consent of both people, where pressure or abuse is used”. This definition refers to both physical pressure (when someone threatens to or actually does hurt the person involved), or emotional pressure (e.g. when someone makes the person involved feel like he or she is bringing shame on his or her family) to get married. Pressure also involves people who may be taken abroad without knowing that they are to be married and when they arrive in the country their passports may be taken by the family to try and stop them from returning home.³²

4.2 Examples on national interpretations of the concept

The **UK Forced Marriage (Civil Protection) Act 2007** gives the following legal definition of forced marriage:³³ “A person (‘A’) is forced into marriage if another

²⁷ Rude-Antoine, op. cit., p. 7.

²⁸ Council of Europe Parliamentary Assembly, *Forced marriages and child marriages*, Report of the Committee on Equal Opportunities for Women and Men, Doc. 10590, 20 June 2005, Rapporteur: Mrs Rosmarie Zapfl-Helbling, Switzerland, Group of the European People’s Party.

²⁹ Necla Kelek, “Heirat ist keine Frage”, Bundesministerium für Familie, Senioren, Frauen und Jugend, op. cit., p. 15.

³⁰ Khanum, op. cit.

³¹ Moira Dustin, Gender equality, cultural diversity, p. 11 (http://www.lse.ac.uk/collections/genderInstitute/NuffieldReport_final.pdf).

³² UK Forced Marriage Unit, What is a forced marriage? (<http://www.fco.gov.uk/resources/en/pdf/2855621/what-is-forced-marriage>).

³³ See No. 1, Forced Marriage (Civil Protection) Act 2007; 63A (4) Family Law Act 1996 England and Wales, (http://www.opsi.gov.uk/acts/acts2007/ukpga_20070020_en_1)

person ('B') forces A to enter into a marriage (whether with B or another person) without A's free and full consent." The force does not have to be applied directly to the victim. It does not matter whether the conduct of B is directed against A, B or another person. Moreover, 'force' includes coercion by threats and other psychological means. There does not have to be a threat of physical violence. The Act thus takes a wide view of the use of force.

A forced marriage has been explicitly defined as a marriage contracted without the free and valid consent of one or both parties, where duress is a factor.³⁴ **Duress is invariably a factor in forced marriages.** The UK Court of Appeal has ruled that the test for duress for these purposes is simply "whether the mind of the applicant (the victim) has in fact been overborne, howsoever that was caused".³⁵ Duress has been recognised by UK courts to include emotional pressure as well as criminal actions such as assault and abduction.³⁶ According to the UK Forced Marriage Consultation, so called 'community marriages' – where one or both spouses do not give their full and free consent or are not old enough to consent – are also a form of forced marriage. In a forced marriage, one or both spouses do not consent to the marriage or consent is extracted under duress. **Duress includes both physical and emotional pressure.** There is a rather broad spectrum of behaviours behind the term forced marriage, ranging from emotional pressure, exerted by close family members and the extended family, to the more extreme cases, which can involve threatening behaviour, abduction, imprisonment, physical violence, rape and in some cases murder which often is referred to as so-called 'honour killings'.³⁷

Further, as a way of illustration, the **German Bundestag's** reasoning for introducing forced marriage as a punishable crime in the German Criminal Code speaks of a forced marriage if at least one of the future spouses is forced into marriage by a situation of pressure.³⁸ For **Danish immigration purposes** a forced marriage is defined as "a marriage entered into against the wishes of one or both of the spouses".³⁹

4.3 Defining forced marriage for the purpose of this study

The definition of the term 'forced marriage' depends on several aspects. **The definition of forced marriage is related to the objective pursued.** The objective can be to support the self-conscious, free and self-determined decision of the spouses with whom to enter into marriage. This would favour a very broad definition of forced marriage. In this case, arranged marriage, early (child) marriage, marriage because of premarital pregnancy, material need, etc. would qualify for defining forced marriage. A broad definition of forced marriage can also include forcing someone to stay

³⁴ Forced Marriage a Wrong not a Right <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf>

³⁵ Hirani vs Hirani (1984) 4 FLR 232 CA. A similar judgement was found in the case of P v R [2003] 1 FLR 661. However, duress was not established in the case of Singh v Singh [1971] 2 All E R 828. In that case a 17-year old Sikh girl went through a civil ceremony of marriage that had been arranged by her family. She had not met the groom prior to the marriage and did not take to him. She subsequently refused to go through the Sikh religious ceremony. She then applied for nullity of the marriage on the grounds that she had only gone through the ceremony in obedience to her parents' wishes and out of a sense of duty to them and Sikh customs. The court rejected her argument that her consent was vitiated by duress as there was no evidence that her will had been overborne or that her consent had been obtained through fear.

³⁶ See <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf>

³⁷ <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf>.

³⁸ See BT-Drs. 16/1035, p. 6.

³⁹ Ny i danmark.dk, Forced marriages.

married and not to seek a divorce. This is a victim-orientated definition. **A broad definition of forced marriage should be used when measures of help for victims are at stake.** It is also useful when state authorities, NGOs, religious organisations, etc. turn to the public or the relevant communities to promote freedom of marriage.

If forced marriage is made a punishable crime, the definition necessarily needs to be stricter. In this case the definition has also to be perpetrator-orientated. The limits of the definitions must be clear and predictable. The rule of law requires that nobody may be punished when the crime is not clearly defined beforehand by law. These definitions, moreover, must fit into the legal tradition and structure of the relevant jurisdiction.

When this study uses the term forced marriage, legal issues are at stake. Therefore, **we prefer using a narrow definition of the term** not including situations when a future spouse is not just clearly convinced to marry the right person, but feels compelled to do so by reasons perhaps of ethics or custom. On the other hand, this study does not only refer to criminal law. It therefore uses a term of forced marriage that alluding to the free will in a legal sense as does the UK Forced Marriages (Civil Protection) Act. Therefore, when we speak of forced marriage, it means **a marriage contracted without the free and valid consent of one or both partners.**

5. FORCED MARRIAGES: A SURVEY OF THE DATA

No overall official data for forced marriages exist across the EU member states. Yet, several studies have been undertaken giving grounds for estimates. **Since there is no generally accepted definition of forced marriage, however, any data on the total number of forced marriages remain unclear.** Forced marriages also vary in number according to the region or member state of the European Union. **In some member states the number of forced marriages seems to be high while in other member states the issue is not, or hardly, visible in the public debate.** Accordingly, data are not collected everywhere, and where data exist they are available only on a highly differing basis. Any data on forced marriages and honour killings therefore have to be interpreted very cautiously.

5.1 Data in the United Kingdom

For the **United Kingdom**, the number of 1,000 young people forced into unwanted marriages each year has been reported.⁴⁰ The recent regional Luton study of forced marriages estimates that as many as 4,000 cases per year may occur in the United Kingdom.⁴¹ The UK Forced Marriage Unit counts approximately 300 cases each year in which it is involved. Probably, these are only the most difficult cases, representing the tip of the iceberg.⁴² Many more are not reported. The Forced Marriage Unit receives about 5,000 calls a year for advice, of which 300 become cases, with one in four leading to overseas rescue of victims and their return to Britain.⁴³

During evidence to the UK Commons Home Affairs Select Committee, which is investigating the issue of forced marriages in 2008, the Parliamentary Under Secretary

⁴⁰ See Moira Dustin, Gender equality, cultural diversity, p. 9 (http://www.lse.ac.uk/collections/genderInstitute/NuffieldReport_final.pdf).

⁴¹ *Spiegel*, 25 March 2008 (<http://www.spiegel.de/panorama/0,1518,542806,00.html>).

⁴² See Khanum, op. cit.

⁴³ *The Scotsman*, 5 January 2008 (<http://thescotsmen.scotsmen.com/scotland/Holyrood-bill-aims-to-end.3643402.jp>).

of State for Children, Young People and Families of the UK Government, Kevin Brennan, indicated that in Bradford with a population of 500,000 inhabitants, 33 children under 16 years of age have vanished from the school register and remain unaccounted for. For 14 other local communities, the statistics show similar data.⁴⁴ It may be assumed that a number of these are victims of forced marriages. A spokesman for the department of children, schools and families said there was no evidence that the “missing” children had been forced into marriage but Bradford was an area where “a forced marriage problem has been reported”.⁴⁵

The Luton study estimates from the total number of about 300 enquiries about forced marriages made to voluntary aid organisations in Luton that upwards of 1,000 people in Luton each year might be concerned with forced marriage.⁴⁶ It does not suggest a figure for the number of forced weddings of Luton residents each year. However, by putting together the number of enquiries to voluntary groups and the probable gap between those who seek help and those who suffer in silence, one can estimate that a significant proportion of Luton residents who marry each year may feel that they have been forced into marriage.

Other reports⁴⁷ for the UK state that 85% of victims of forced marriages are women (mostly between 15-24 years of age), 90% are Muslim and 90% are of Pakistani or Bangladeshi heritage.

5.2 Data in Germany

In **Germany**, there are no fixed data on forced marriages. Only a few cases are made public and only those cases that escalate come to be known. It is highly probable that the unreported cases amount to a much higher number than the reported cases. It is generally said that many cases are not reported.⁴⁸ The victims very often do not speak up because they do not know their rights or feel ashamed. Many women feel their situation as being normal, because their mothers suffered the same fate. Therefore, forced marriage and arranged marriage overlap and the difference between them is difficult to define. In 2007, the German government initiated a study to collect overall data on the total number of forced marriages.

However, special projects in Germany give a basis for understanding the extent of the problem. A housing project in Stuttgart (Rosa) reports that on average ten girls or young women seek shelter against forced marriage per month. In 2002, the Senate of Berlin documented about 230 cases of forced marriage in Berlin.⁴⁹ 70% of the victims were minors. 30% had attempted suicide.⁵⁰ According to Terre des Femmes,⁵¹ another study was conducted in Berlin based on inquiries in 200 institutions working in the field of youth aid and migration. This study found 300 cases in which girls or young women had looked for advice because of imminent or concluded forced marriage. Another 30 cases involved imminent or concluded forced engagements. In 130 cases

⁴⁴ *Spiegel*, 25 March 2008 (<http://www.spiegel.de/panorama/0,1518,542806,00.html>).

⁴⁵ *Daily Mail* (http://www.dailymail.co.uk/pages/live/articles/news/news.html?in_article_id=526233&in_page_id=1770&ct=5).

⁴⁶ Khanum, op. cit.

⁴⁷ *The Scotsman*, 5 January 2008 (<http://thescoatsman.scotsman.com/scotland/Holyrood-bill-aims-to-end.3643402.jp>).

⁴⁸ BT-Drs. 16/1035, p. 7.

⁴⁹ BT-Drs. 16/1035, p. 7.

⁵⁰ <http://www.amnesty-frauen.de/Seiten/Themen/VAWzwhei.htm>

⁵¹ http://www.frauenrechte.de/tdf/index.php?option=com_content&task=view&id=164&Itemid=126

the ages of the victims were known: 40% were 16 to 18 years of age, 32% between 19 and 21 years, close to 18% between 22 and 25 years, and 10% were between 13 and 15 years old. In ten cases the victims were males. The study also showed that forced engagements and forced marriages take place predominantly abroad and that the bride and bridegroom rather often are relatives.

A study initiated by the German Federal Ministry of Family, Elderly People, Women and Youth⁵² in summer 2004 interviewed 250 Turkish women, of whom 150 gave answers to the question of forced marriage. For about half of them, the spouse had been chosen by their family members. 75% of these women had agreed with the choice; about one quarter had not been asked their opinion of the future spouse. 17% stated that they felt to be forced into the marriage. A survey in the German Land of Baden-Württemberg initiated by the Land's ministry of justice found that from January until October 2005, as many as 213 women and two men had sought help because of imminent or already concluded forced marriage. Some 105 of them already lived in the forced marriage, while 110 of them were under threat of forced marriage. 40% of them were minors when being forced into the marriage.⁵³ In 2007, the City of Hamburg made public a study by the Lawaetz Foundation that had been conducted from July to September 2006 counting 210 cases of counselling on concluded or imminent forced marriage in the year 2005. Most of the victims were between 18 and 21 years of age. In 53 cases, the forced marriage involved spouses living in Germany, in 45 cases the bride had been brought from the home country and in 39 cases marriage was for obtaining an immigration permit.⁵⁴ The latter figure might give a rough idea about the extent of unwilling sponsors to bring a spouse through family reunification into the EU following a forced marriage. 18% of the cases related to such a situation. This does not indicate the actual number of cases, because the study includes counselling cases which may not connect to documented forced marriages.

A US Department of State report⁵⁵ observed that while there were no conclusive statistics regarding the actual number of forced marriages in Germany, evidence indicated that the problem occurred more often in the immigrant Muslim community than in the population in general. Forced marriages reportedly often led to violence. Such marriages affected not only some young women living in the country for whom the family brought a husband from abroad, but also young women who were sent against their will from Germany to other countries to be married. On 18 June 2007, the Baden-Württemberg ministries for education and social affairs began implementing several programmes to combat forced marriage in the Muslim community. In addition, the state government continued to discuss the issue with representatives of Muslim organisations.

⁵² Vgl. BT-Drs. 16/412, p. 2.

⁵³ Bericht der Fachkommission Zwangsheirat, <http://www.justiz.baden-wuerttemberg.de/servlet/PB/menu/1216525/index.html?ROOT=1153239>

⁵⁴ <http://www.lawaetz.de/af/few/dokumente/Bericht%20Zwangsheirat%20Hamburg%20Oktober%202006.pdf>

⁵⁵ US Department of State, Germany Human Rights Country Report, 2007 (<http://www.state.gov/g/drl/rls/hrrpt/2007/100561.htm>).

5.3 Data in Switzerland

For **Switzerland**, a study⁵⁶ conducted by the Surgir Foundation estimates that there are about 17,000 forced marriages (including cases of threatening with such a marriage) in the country. One-third of the victims are said to be minors (between 13 and 18 years of age). The police in Bern report 80 cases of procedures in alien law because of forced marriages in 2005; the dark number for the last five years is estimated to be about 450 cases with increasing tendency.⁵⁷

The preceding examples are illustrative of the difficulty to give reliable data on how many forced marriages are recognised in the European Union. Therefore, it is also not possible to indicate a percentage of recognised forced marriages. In fact, there are only rare occasions in which something like a formal recognition of a marriage would take place, since the marriage as such usually is the ‘recognition’ of it. A formal procedure of recognition of marriage could take place when the status of marriage is disputed in special circumstances. However, no statistical data on such cases are available. Nor have any data been collected concerning the number of annulments or divorces because of use of force.

6. LEGAL STANDARDS

6.1 Relation between forced marriages and Member States’ obligations under international and European human rights law

In all member states of the European Union **forced marriage is considered to be contrary to the law.**⁵⁸ All Member States are obligated by the European Convention on Human Rights, under which the right to marry is established in Article 12 as follows: “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.” This entails also the right not to be forced into marriage. Equally, when the European Charter of Fundamental Rights provides in its Article 9 that “the right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights”, this includes the right to freely choose a spouse and also the right not to marry.

Forced marriage is a violation of fundamental human rights, implicating a wide range of international standards and laws, including among these, Article 23(3) of the International Covenant on Civil and Political Rights, which states: “No marriage shall be entered into without the free and full consent of the intending spouses”. **Forced marriage of minors implicates a broad range of fundamental human rights**, calling into question States’ compliance with the International Convention on the Rights of the Child, the guiding principle of which is “the best interests of the child”. Article 19(1) of the Convention states: “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” The

⁵⁶ Fondation Surgir, *La prévalence du mariage forcé en Suisse: Rapport de l’enquête exploratoire*, Lausanne, 2006, p. 11 (<http://www.surgir.ch/data/surgir/content/document/188.pdf>).

⁵⁷ Strafbarkeit von Zwangsheiraten und arrangierten Heiraten: Bericht des Bundesrates in Erfüllung des Postulates 05.3477 der Staatspolitischen Kommission des Nationalrates vom 9.9.2005, 14.11.2007, p. 6.

⁵⁸ See Chiara Ruscazio, “Matrimoni forzati’ tra religione e diritto”, *Quaderni di diritto e politica ecclesiastica*, 2007, pp. 221-256.

marriage of minors is itself of deep concern. Child marriage is a threat to the realisation of the right to education, guaranteed under numerous international instruments including the European Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Child marriage also creates conditions for the infringement or unnecessary limitation of the right to the highest attainable standard of health. It is predominant legal opinion in Europe today that fundamental rights not only require the States to refrain from intruding into the protected sphere of the right themselves. **States also have an obligation to actively protect by appropriate action those threatened in the full use of their rights by third parties.**

The Convention on the Elimination of all forms of discrimination against women, adopted in 1979 by the UN General Assembly is often described as an “international bill of rights for women.” This Convention was one of the first instruments to pinpoint discrimination against women as an offence against human dignity. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. It is particularly pertinent in the discussion on forced marriages but also on honour killings.⁵⁹ Article 2 of the Convention calls upon the states to ensure that “All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women”.

Furthermore, in its article 16(1), it specifically prohibits the practice of forced Marriages:

1. 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:
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

This Convention has been ratified by all EU Member States⁶⁰ and this particular provision is reflected the Member States’ civil law on marriage. In 1994, the Committee on the Elimination of Discrimination against Women issued specific recommendations relating to equality in marriage and family relations. Whilst reiterating the requirement of a free and valid consent to marriage, it pointed out that in many countries, although national legislations are mostly compliant, custom, tradition and failure to enforce these laws in effect constitute violations of the Convention.⁶¹ Given the weak enforcement mechanisms available for this convention however, it is difficult to assess to which extent these recommendations are taken into account by the signatories.

⁵⁹ For a discussion on the relevance of this Convention for cases of honour killings, please refer to Jane Hailé, Honour Killings, Its Causes & Consequences: Suggested Strategies for the European Parliament, Briefing paper for the European Parliament, 20 December 2007.

⁶⁰ For status and date of ratification, refer to Annex 2 of this paper.

⁶¹ General Recommendation No. 21 (13th session, 1994), Equality in marriage and family relations, Comments 15 and 16: “15. While most countries report that national constitutions and laws comply with the Convention, custom, tradition and failure to enforce these laws in reality contravene the Convention. 16. A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.”

More recently, a UN resolution “Working towards the elimination of crimes against women committed in the name of honour”⁶², specifically addressed the issue of honour killings. It recommended states to inter alia implement their relevant obligations under international human rights law; intensify efforts to prevent and eliminate crimes against women committed in the name of honour by using legislative, educational, social and other measures.⁶³

6.2 Forced marriages and criminal law

Forcing someone into marriage is an explicit crime only in a few Member States of the European Union such as Austria, Cyprus and Germany.⁶⁴ As to non-EU states, forced marriage is a specific crime in Norway, Serbia and Albania. In Macedonia, forced marriage is a specific crime in specific circumstances. However, since the exact wording of the description of the illegal action varies according to the legal cultures of the countries, special attention must be paid to the specific formulation of the crime. In other European jurisdictions, forced marriage is **punishable under general provisions**, especially as crimes such as coercion. Other criminal offences can also be committed in the context of forced marriages depending on the specific circumstances of the individual case.

There is **ongoing debate** in many European countries whether or not to introduce a specific norm that would make forcing someone into marriage an explicit crime or to change the position and description of such a crime within the criminal code.

6.2.1 A comparative account

Reference to the relevant criminal legislations in the Member States cited is provided in Annex 3.1 together with their respective content.

⁶² A/RES/55/66, of December 2000. This resolution has been followed up by a number of further initiatives. Cf.: Working towards the elimination of crimes against women committed in the name of honour (A/RES/57/179, of December 2002); Working towards the elimination of crimes against women and girls committed in the name of honour (A/RES/59/165, of December 2004); Reports of the Secretary-General: Working towards the elimination of crimes against women committed in the name of honour (A/57/169, of October 2002); SR Reports to the Commission on Human Rights E/CN.4/1999/39, paras. 74-75; E/CN.4/2000/3, paras. 78-84; E/CN.4/2001/9, paras. 41 and 117; E/CN.4/2002/73/Add.2, paras. 155-158; E/CN.4/2002/74, para. 52; E/CN.4/2002/74/Add.1, paras. 64-66; E/CN.4/2003/3, paras. 58-61; E/CN.4/2003/75/Add.1, para. 1737; E/CN.4/2004/7, paras. 66-71; E/CN.4/2005/72/Add.1, paras. 445-450; E/CN.4/2005/7/Add.1, paras. 734-737; SR Reports to the General Assembly A/55/288, para. 40; A/57/138, paras. 34-36; A/59/319, paras. 54-56; SR Reports to the Human Rights Council A/HRC/4/21, paras. 34-39; A/HRC/4/34/Add.2, paras. 19-33.

⁶³ including the dissemination of information, and to involve, among others, public opinion leaders, educators, religious leaders, chiefs, traditional leaders and the media in awareness-raising campaigns; to encourage, support and implement measures and programmes aimed at increasing the knowledge and the understanding of the causes and consequences of crimes against women committed in the name of honour, among those responsible for enforcing the law and implementing policies, such as police personnel, judicial workers and health personnel; to establish, strengthen or facilitate, where possible, support services to respond to the needs of actual and potential victims by, inter alia, providing for them the appropriate protection, safe shelter, counselling, legal aid, rehabilitation and reintegration into society; to create, strengthen or facilitate institutional mechanisms so that victims and others can report such crimes in a safe and confidential environment, and encourages states to gather and disseminate statistical information on the occurrence of such crimes.

⁶⁴ For a cross-state comparison of the relevant criminal law sanctions, please refer to Annex 3.1

In **Austria**⁶⁵, an amendment to the criminal code that made forcing someone into marriage a specific crime came into effect on 1 July 2006. Now, § 106 Sect. 1 No. 3 of the Austrian criminal code provides: Forcing somebody to marry is a case of grievous compulsion punishable with imprisonment between six months and five years. Forced marriage is a crime against personal autonomy, to be prosecuted by the state rather than at the request of the individual.⁶⁶ If the crime has caused the suicide or the attempt thereof by the victim the punishment is imprisonment from one up to ten years. The same punishment is due in a number of further similarly grave cases.

In **Cyprus** the criminal code Cap 154 article 150 provides that anyone who by duress causes any person to marry against his or her will, is guilty of a misdemeanour.

Germany has amended its criminal code in 2005 to make forcing someone into marriage a specific crime.⁶⁷ The amendment came into effect on 19 February 2005. According to § 240 section 4 Nr. 1 Criminal Code, forcing someone to conclude marriage is a particularly serious case of compulsion with a sentence of imprisonment from six months up to five years.

For Germany, there are no data on how many criminal cases of forced marriage have been persecuted. Data will be collected in connection with the opening of PKS-neu within INPOL-A (INPOL-Analyse). The first step in this process can be expected by the end of 2008. A survey of pending cases under investigation in 2006 showed that there were 13 instances of alleged criminal forced marriages in 2006.⁶⁸

⁶⁵ Bundesgesetzblatt I Nr. 56/2006; Strafgesetzbuch.

§ 106 Schwere Nötigung

(1) Wer eine Nötigung begeht, indem er ...

3. die genötigte Person zur Eheschließung, zur Prostitution oder zur Mitwirkung an einer pornographischen Darbietung (§ 215 Abs. 3) oder sonst zu einer Handlung, Duldung oder Unterlassung veranlasst, die besonders wichtige Interessen der genötigten oder einer dritten Person verletzt,

ist mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.

(2) Hat die Tat den Selbstmord oder einen Selbstmordversuch der genötigten oder einer anderen Person, gegen die sich die Gewalt oder gefährliche Drohung richtet, zur Folge, so ist der Täter mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen.

(3) Ebenso ist zu bestrafen, wer eine Nötigung zur Prostitution oder zur Mitwirkung an einer pornographischen Darbietung gegen eine unmündige Person, im Rahmen einer kriminellen Vereinigung, unter Anwendung schwerer Gewalt oder so begeht, dass durch die Tat das Leben der Person vorsätzlich oder grob fahrlässig gefährdet wird oder die Tat einen besonders schweren Nachteil für die Person zur Folge hat.

⁶⁶ Moira Dustin, Gender equality, cultural diversity, p. 11,

http://www.lse.ac.uk/collections/genderInstitute/NuffieldReport_final.pdf.

⁶⁷ § 240 Nötigung

(1) Wer einen Menschen rechtswidrig mit Gewalt oder durch Drohung mit einem empfindlichen Übel zu einer Handlung, Duldung oder Unterlassung nötigt, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft.

(2) Rechtswidrig ist die Tat, wenn die Anwendung der Gewalt oder die Androhung des Übels zu dem angestrebten Zweck als verwerflich anzusehen ist.

(3) Der Versuch ist strafbar.

(4) In besonders schweren Fällen ist die Strafe Freiheitsstrafe von sechs Monaten bis zu fünf Jahren. Ein besonders schwerer Fall liegt in der Regel vor, wenn der Täter

1. eine andere Person zu einer sexuellen Handlung oder zur Eingehung der Ehe nötigt,

2. eine Schwangere zum Schwangerschaftsabbruch nötigt oder

3. seine Befugnisse oder seine Stellung als Amtsträger missbraucht.

⁶⁸ BT-Drs. 16/5498, p. 3.

The **Norway** 2003 Penal Code Amendment introduced a specific subsection on forced marriage and amended the prosecution provisions in cases of forced marriage, with or without the victim's consent⁶⁹ (Art. 222, 2 Criminal Code)⁷⁰.

According to the **Serbian** criminal code, there are three incriminations concerning forced marriage – to conduct null marriage, to facilitate the conduct of a forced marriage, and to engage in a spurious partnership with minors. The first and the second incrimination are very general, covering a broad area of null marriages, among them forced marriages. The third one in one of its forms concerns only the specific case where the parents enable the spurious partnership with their minor child, which could be seen as a case of forced 'marriage'. As for the prevention of forced marriages, it is mostly based on general anti-discriminatory rules which have recently been introduced into Serbian legislation.

The **Albanian** Criminal Code envisions a special chapter on penal offences against children, marriage and family. If a person is coerced to or kept from starting or continuing co-existence or is coerced to dissolve marriage, that person has the right to protection through penal code provisions that describe this act as a penal offence that is punishable by a fine or up to three months of imprisonment.⁷¹ In addition, under Art. 196 of the Albanian Criminal Code, enabling a marriage that is not allowed is punishable as a criminal offence.⁷²

In the Criminal Code of the Former Yugoslav Republic of **Macedonia**, there is no specific crime or offence of forced marriage. As in most or all of the European countries, there is an offence covering the use of coercion in general. The prosecution of this offence is not taken ex officio, but upon the request of the individual. However, with the amendments of the Criminal Code of the Former Yugoslav Republic of Macedonia in 2004, in Chapter 34 – Crimes against Humanity and International law – Trafficking in Human Beings has been introduced as a criminal offence under Art. 418a of the Macedonian criminal code.⁷³ The offence covers use of force or other forms of coercion in recruitment, transport, buying and selling of persons, inter alia, for the purpose of forced marriage, and makes it punishable with imprisonment of at least four years.

A forced marriage can be a criminal offence under more general provisions, as is the case in **Hungary**, depending on the nature of the force. The **Slovenian** penal code defines crimes e.g. "forcing a person to the relation of slavery" (Art. 387) and "trade or traffic with people". However, forced marriage is not specifically defined as a

⁶⁹ Moira Dustin, Gender equality, cultural diversity, p. 11 (http://www.lse.ac.uk/collections/genderInstitute/NuffieldReport_final.pdf).

⁷⁰ 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.

⁷¹ Penal Code, Tiranë 1995, Art. 130.

⁷² According to this provision, an official person who, when performing his official duty, enables a marriage even though he knows of legal obstacles because of which the marriage is prohibited or non-valid, shall be punished with a fine, or with imprisonment of up to three years.

⁷³ The one that by force, serious threats, delusions or other forms of coercion, by kidnapping, by deceit and abuse of his/her own position and abusing the pregnancy or the position of weakness of somebody else, or the physical or mental disability of another, or, by giving or receiving money or other benefits in order to obtain agreement of the person that has control over another person, recruits, transports, transfers, buys and sells persons, harbours or accepts persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced fertilization, unlawful adoption, or similar relationship it or illicit transplantation of human organs, shall be punished with imprisonment of at least four years.

crime in the penal code of Slovenia. Also, in **Greece** forced marriage is not a specific crime or offence; "Illegal violence" (coercion), however, is a criminal act, which could include forced marriages. The **Estonian** Criminal Code also does not list forced marriage as a specific crime. However, other provisions are potentially available to deal with forced marriages indirectly, if the circumstances amount to crime under these provisions. Several provisions in the Chapter 4 (Offences against Persons) of the Estonian Criminal Code⁷⁴ may be applicable such as sexual intercourse with a female under the age of 14 (§ 116), Rape (§ 115) and Threatening (§ 128).

In most jurisdictions, e.g. **Spain**, even though forced marriage is not a specific crime or offence, **related actions thus may be criminalised**. The Spanish Penal Code states the criminal responsibility of those who authorised a marriage knowing there is a cause of nullity. That applies to religious ministers or civil servants who intervene in forced marriages in which there is evidence of the lack of a spouse's consent.

In a number of Member States, like in **Latvia**, no forced marriages have been reported or at least have not come to the attention of the public, and this can be the main reason that the respective laws do not specifically recognise such a crime. Other Member States of the European Union, such as **Sweden**, are discussing the introduction of a special provision to make forcing someone to marry a specific crime. However, for the time being, no specific provisions have been introduced in Sweden beyond the existing more general provisions against coercion and similar offences.

An intense public debate of this kind has taken place in the **United Kingdom**. Finally, the UK Government decided in 2006 not to create a new criminal offence. The Working Group on forced marriage had advised against creating a new criminal offence,⁷⁵ pointing out that current common and statutory law provided a wide range of powers relating to matrimony itself, the protection of children and young people, etc., while any criminal acts perpetrated in the course of forcing a marriage would in any case be subject to prosecution. Concerns were raised that a requirement to establish the motivation of someone forcing a marriage could hinder a prosecution that might be more straightforward under existing law.

6.2.2 The pros and cons of criminalizing forced marriages

In the **UK**, **arguments⁷⁶ against creating a specific criminal offence** included: the fear that their families risk being prosecuted may stop victims from asking for help; the risk that parents may take children abroad and marry them off or hold them there at an earlier age to avoid increased risks of prosecution in Britain; that there are already sufficient criminal offences and protective measures that can be used; that if it were very difficult to mount a successful prosecution, the new offence might be routinely flouted with impunity; that a new offence would disproportionately impact on black and minority ethnic communities and might be misinterpreted as an attack on those communities; that families concerned may not feel implicated by such an offence because many may believe their children did consent to the marriage, even though that consent was obtained under duress; that prosecuting a new offence would be expensive and the funds might be better spent on improving support for those at risk; that increased risks of prosecution or threat of prosecution would make it harder

⁷⁴ Criminal Code, passed 7 May 1992 (RT¹ 1992, 20, 288; consolidated text RT I 2001, 73, 452), entered into force 1 June 1992, as amended.

⁷⁵ Cf. also Khanum, op. cit., p. 5.

⁷⁶ <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf>

for victims to reconcile with their families; that increased involvement in criminal prosecutions could be harrowing for victims who want to move on; and that there are other better non-legislative means of working within communities to change views and tackle the abuse.

Arguments in favour of creating a specific offence included: that primary legislation could change public opinion, and thus perception and practice; that it could have a strong deterrent effect; that it could empower young people with more tools to negotiate with their parents and in some cases with parents facing pressure from relatives; that it could simplify and clarify matters for public sector employees tackling this issue; and that it would make it clearer what steps can be taken and easier to take action against perpetrators.

A key question was seen in whether the potential longer-term benefits of changing ingrained views on forced marriage and giving young people more tools to negotiate with their parents would outweigh risks such as driving the problem underground and abroad. For the time being, the latter risks outweighed the potential benefits in the political decision-making. This was more the case since it was established that in the UK, protection against forced marriage was regarded as already sufficiently afforded by general criminal law.⁷⁷

The UK Forced Marriage Consultation produced a detailed list of criminal offences under which punishment was and is possible in connection with forced marriage. Some of these criminal offences could also be committed while the spouses live in a forced marriage. Within England and Wales or Scotland, the law provides protection from the crimes that might be committed when forcing someone into a marriage. Depending on the circumstances, perpetrators⁷⁸ could be prosecuted for a range of offences. These include, with certain differences between England and Wales on the one hand and Scotland on the other hand: kidnapping, child abduction, false imprisonment, assault and battery, threats to kill, public order offences, harassment, child cruelty, sexual offences, blackmail, abduction, breach of the peace, breach of a non-harassment order and rape. Some of these offences have no maximum penalty. Other offences that may be committed as part of forcing someone into a marriage include failing to ensure attendance at school, immigration offences and murder. Decisions whether to prosecute for criminal offences in any given case are for the police and the prosecuting authorities, taking into account both whether there is sufficient evidence available and whether a prosecution would be in the public interest.

The report of the Bundesrat of **Switzerland** on forced and arranged marriages⁷⁹ has argued in a similar direction: Although making it a specific crime to force someone into a marriage could raise awareness of the problem in the public sphere, it would remain doubtful whether this message would reach the perpetrators and their victims.

6.3 Other national initiatives

Member States have responded to these initiatives and to the needs seen in their jurisdictions with a variety of steps. These steps differ according to the intensity with

⁷⁷ <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf>

⁷⁸ Perpetrators can also include members of the extended family, potential or, where the marriage has already taken place, in-laws and husbands, and members of the community.

⁷⁹ Cf. Strafbarkeit von Zwangsheiraten und arrangierten Heiraten: Bericht des Bundesrates in Erfüllung des Postulates 05.3477 der Staatspolitischen Kommission des Nationalrates vom 9.9.2005, 14.11.2007, p. 2.

which the issues have surfaced in the various Member States. One can also say that **some Member States have taken a lead in engaging into action.**

6.3.1 The United Kingdom

The **United Kingdom** established a special ‘Forced Marriage Unit’ in 2005 which is a joint Foreign and Commonwealth Office and Home Office institution designed to help people who are being forced into marriage. It offers confidential support and information.⁸⁰ Its main initiatives are to provide ongoing support and advice to victims and potential victims of forced marriage; to establish a Two-Year Action Plan, to ensure a multi-agency approach to tackling forced marriage; to develop a programme of cooperation with South Asian governments and police services to assist and where appropriate extricate British victims of forced marriage; to provide good practice guidance for professionals, notably in education, social work and health and police services, through publications, seminars, training, etc; and to raise publicity and awareness within relevant communities.⁸¹ A number of publications about forced marriage targeting a variety of different recipients such as victims, counsellors or authorities has been produced and distributed.⁸²

Furthermore, the United Kingdom has introduced the Forced Marriage (Civil Protection) Act of 2007 for England, Wales and Northern Ireland. Under the Act, where a forced marriage has taken or is about to take place, courts are able to make orders to protect the victim or the potential victim and help remove them from that situation. For related purposes, the Act also establishes detailed measures. It empowers courts to make forced marriage protection orders that limit the conduct of people who are attempting to coerce someone into marriage. It allows victims to obtain court injunctions against anyone trying to force them to marry. Courts can make orders also against third persons involved in the forced marriage in other respects. Examples of involvement in other respects are aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage; or conspiring to force, or to attempt to force, a person to enter into a marriage. The courts have wide discretion in the type of injunctions they can make to enable them to respond effectively to the individual circumstances of the case and prevent or pre-empt forced marriages from occurring.⁸³ A forced marriage protection order may contain such prohibitions, restrictions or requirements, and such other terms as the court considers appropriate for the purposes of the order. It may include arrests. The court may make a forced marriage protection order on an application being made to it; and under certain conditions also without an application being made to it. An application may be made by the person who is to be protected by the order or a relevant third party.

In deciding whether and how to exercise its powers, the court must consider all the circumstances including the need to secure the health, safety and well-being of the person to be protected or another person. For the purposes of the Act, a person is forced into a marriage if another person forces him or her to enter into a marriage without his or her free and full consent. It does not matter against whom the force is

⁸⁰ www.fco.gov.uk/forcedmarriage.

⁸¹ See also Khanum, *op. cit.*, p. 4.

⁸² Cf. <http://www.fco.gov.uk/en/travelling-and-living-overseas/things-go-wrong/forced-marriage>.

⁸³ <http://www.justice.gov.uk/news/newsrelease260707c.htm>;
http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_00700_20_en.pdf.

directed. "Force" includes coercion by threats or other psychological means and related expressions are to be read accordingly. As has been remarked,⁸⁴ it remains to be seen how effectively these powers are interpreted in practice. It has been said⁸⁵ that the Act will not in itself change attitudes, but it does offer legal protection to potential victims, and perpetrators who violate the terms of a forced marriage protection order may be arrested. It is much too early to try any evaluation of the Act in this respect.

In addition to the above Act, the UK Immigration Minister, on 4th November 2008, announced that the minimum age to apply for a marriage visa is raised, as of 1st December 2008 (date of entry into force), from 18 to 21 years of age. This is a flanking measure to the above Act to combat forced marriages as well as immigration abuse.

6.3.2 Denmark

Denmark has established a 2003-05 action plan to counteract "forced, quasi-forced and arranged marriages" highlighting 21 initiatives to prevent forced marriages and discourage unhappy family reunifications based on arranged marriages.⁸⁶ The plan concentrates on prevention and awareness-raising through information, dialogue, cooperation, counselling, research and providing residential facilities.⁸⁷

Already in June 2002, the Danish government introduced legislative measures to intensify efforts to prevent forced and arranged marriages. Amendments were made to the immigration and marriage acts, raising the age requirement for family reunification of marriage partners from 18 to 24 years. It was also decided that, as a general rule, permission for family reunification will not be given when it is considered doubtful that the marriage was entered into according to the wishes of both partners. The changes in the rules are said to have already proved highly effective.⁸⁸ In contrast to that finding, a study in the UK⁸⁹ indicates that there was no evidence that raising the age of sponsorship or entry from 16 to 18 years old had any major impact on the incidence of forced marriage cases.

The risks of further increasing the age of sponsorship or entry to 21 or 24 would outweigh its possible benefits. The potential benefits of raising the entry age were seen as being the possibility of greater maturity, access to education and financial independence for young people, all of which could leave them in a stronger position to resist forced marriage. However, these benefits were also perceived as being largely outweighed by the risks of increased physical and psychological harm to victims and potential victims of forced marriage, which included young British women being taken abroad to marry and kept there forcibly until they were old enough to sponsor their spouses; entering the UK with false documentation; and implications for mental health, particularly attempted suicide and self-harm. The concern was that an increase in age could also prevent victims from accessing some

⁸⁴ Khanum, *op. cit.*, p. 5.

⁸⁵ *Ibid.*, p. 15.

⁸⁶ Moira Dustin, Gender equality, cultural diversity, p. 9
(http://www.lse.ac.uk/collections/genderInstitute/NuffieldReport_final.pdf).

⁸⁷ *Ibid.*, p. 10.

⁸⁸ http://www.cesnur.org/2006/sd_martinez.htm.

⁸⁹ Marianne Hester, Khatidja Chantler, Geetanjali Gangoli, Jasvinder Devgon, Sandhya Sharma, Ann Singleton, Forced marriage: The risk factors and the effect of raising the minimum age for a sponsor, and of leave to enter the UK as a spouse or fiancé(e) (<http://www.bristol.ac.uk/vawrg/>).

potential sources of support, such as those provided via child protection legislation and education-based counselling support. Further risks include the discriminatory nature of the mooted increase in age, i.e. to impose a dual system of marriage ages within the UK, with a disproportionate effect on certain minority communities; and human rights implications, i.e. the impact on marriages entered into by mutual consent.

Another ‘Action plan to stop men’s domestic violence against women and children 2005–2008’ has been introduced by the Danish government.⁹⁰ It gives detailed information about the status on implementation of initiatives in the Government’s action plan against forced marriages, semi-forced marriages and arranged marriages. It mentions numerous activities especially of information and awareness-raising projects such as books, lectures, seminars, counselling, mentor schemes or shelter-homes and girls’ clubs which have been supported by the government. The report indicates that mediation should be used with caution and only by professionals. However, the government believes that in cases where mediation is an option, this is the best solution as it allows the young people to maintain relations with their families and networks. Conflict resolution and mediation courses have been held.

6.3.3 Germany

Germany amended its criminal code in 2005 to make forcing someone into marriage a specific crime. Further, the German Bundesrat has passed a bill introducing a new paragraph 234 b making ‘forced marriage’ punishable with imprisonment for up to 10 years into the criminal code.⁹¹ It is also suggested to have forced marriage covered by the world law principle of §5 StGB in order to be able to also punish such acts that are committed abroad. The bill is currently pending in the Bundestag. The Bundesrat also has introduced a bill to strengthen the status of victims of forced marriage in penal law procedures.⁹²

Moreover, in Germany, reform of alien law has introduced a provision (§ 27 sec. 1 a Nr. 2 AufenthG) that prohibits family-reunification in case of evidence of forced marriage. Supporters of this provision argue that this will prevent forced marriages to be concluded for immigration reasons. Critics argue that on the contrary, individuals who live within or are threatened with forced marriage should be facilitated to come into Germany so that they can more easily break away from their forced marriage.⁹³ This reasoning is supported by the experience of the UK-case mentioned above in which a Bangladeshi woman of British citizenship broke away from her forced marriage only after having come back to the UK. It can be argued that it is highly difficult for a woman to escape from a forced marriage in a cultural and social setting in which forced marriage is more generally accepted and shelter is not or not extensively enough provided.

⁹⁰ http://ligeuk.itide.dk/Files/PDF/MFL_handlingsplan_UK.pdf.

⁹¹ Heiner Bielefeldt/ Petra Follmar-Otto, in: Bundesministerium für Familie, Senioren, Frauen und Jugend (ed.), Zwangsverheiratung in Deutschland, 2007, p. 21, http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-20Forschungsreihe-Band_201.property=pdf.bereich=sprache=de.rwb=true.pdf.

⁹² BT-Drs. 16/9448.

⁹³ Heiner Bielefeldt/Petra Follmar-Otto, in: Bundesministerium für Familie, Senioren, Frauen und Jugend (ed.), Zwangsverheiratung in Deutschland, 2007, p. 20, http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-20Forschungsreihe-Band_201.property=pdf.bereich=sprache=de.rwb=true.pdf.

The German Federal Ministry for Family, Aged People, Women, and Youth together with the German Institute for Human Rights has produced a highly substantive study into the issue of forced marriages.⁹⁴ This studies inter alia points at the high relevance of social law⁹⁵ to help victims of forced marriage so that they can make their own living when breaking away from a forced marriage or a threat thereof.

In the German Land of Lower Saxony, a toll free ‘Crisis Telephone Forced Marriage’ connects during daylight hours with trained female consultants who among other languages also speak Turkish. An e-mail address can be reached at any time.⁹⁶

Very many civil society initiatives to fight forced marriages are supported by the German authorities. Germany has for long established women shelter houses in which females under threat or confronted with violence can seek shelter.

6.3.4 Other Member States

Sweden emphasizes prevention and has set up a plan to fight ‘suppression of girls in patriarchal families’.⁹⁷ **France** has increased the normal age of marriage for females from 15 to 18 years, thus making it the same as for males (Art.144 of the Code Civil). France has also amended its rules on procedure of marriage to establish the free will of the intending spouses.

Austria has introduced a provision into its criminal code according to which forcing someone into marriage has become a specific crime of violence (§ 106 Sect. 1 No. 3 of the Austrian Criminal Code). In terms of civil law, 16 and 17 year old girls need the permission of the court if they want to marry (§ 1 No. 2 of the Austrian law on marriage). If the judge suspects a forced marriage he or she must not give this permission. The city of Vienna recently has introduced a specific duty of city authorities to apply guidelines that are designed to enable them better to recognize forced marriages and to help the victims. Girls who flee from a forced marriage will now be taken care of in special housing communities. The city of Vienna also has produced a folder in several languages which gives information about women’s rights, forced marriages and places of refuge which is distributed in Mosques, hospitals, schools, registrar’s offices, and meeting places of migrants.⁹⁸ There are quite a number of civil initiatives, platforms and institutions which call for legal action such as the ‘Plattform gegen Zwangsheirat’; ‘proFrau’ and ‘Orientexpress’ active (also) in Austria.⁹⁹

In **Spain**, as in all EU Member States, generally speaking forced marriages should be declared not valid by a court decision. If forced marriages are celebrated in foreign countries and the spouses want to register it in Spain in order to gain civil effects, the

⁹⁴ Bundesministerium für Familie, Senioren, Frauen und Jugend (ed.), Zwangsverheiratung in Deutschland, 2007, http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-20Forschungsreihe-Band_201.property=pdf.bereich=sprache=de.rwb=true.pdf.

⁹⁵ Heiner Bielefeldt/Petra Follmar-Otto, in: Bundesministerium für Familie, Senioren, Frauen und Jugend (ed.), Zwangsverheiratung in Deutschland, 2007, p. 22, http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-20Forschungsreihe-Band_201.property=pdf.bereich=sprache=de.rwb=true.pdf.

⁹⁶ Flüchtlingsrat Niedersachsen, Telephone-No.: 0800-0667888 ; <http://www.nds-fluerat.org/aktuelles/kostenloses-krisentelefon-zwangsheirat/>; zwangsheirat@kargah.de.

⁹⁷ Zenia Hellgren and Barbara Hobson, Intercultural Dialogues in the Good Society: the Case of Honor Killings in Sweden, 2006, www.gwu.edu/~psc/news/Hobson%20Honor%20Killings%20paper%20June%202006.doc.

⁹⁸ Die Presse, 26.03.2008 , <http://diepresse.com/home/panorama/oesterreich/372506/index.do>.

⁹⁹ http://www.humanrights.ch/home/upload/pdf/070411_polis_aktuell_zwangsheirat.pdf; <http://www.gegen-zwangsheirat.at/>; <http://www.profrau.at/>.

lack of consent of one of them is against Spanish public order and the register should deny the inscription of the matrimony and the civil effects of it (Art. 12.3 of the Spanish Civil Code). Resolutions of the Spanish General Direction of the Registers have rejected the inscription of Morocco marriages with evidences of the lack of consent of the women (e.g. in a Resolution of April, 2, 1997¹⁰⁰, the spouse was only four years old and, obviously, the consent was given by her father as the wali).

Equivalent rules apply in **Estonia**. There are no specific measures dedicated to dealing with forced marriages. However, the law explicitly prohibits the element of coercion in matters of marriage (§ 2 Estonian Family Law Act). The prerequisites for marriage (consent, age, etc) and grounds for annulment help to deal with forced marriages. In **Italy**, no specific legal measure has been taken as yet to stop or prevent forced marriages. However, general rules are applied. This is also the case in **Hungary** and **Greece**.

Following this cross-perspective assessment among Member States, the following measures can be deemed to constitute **shared approaches**: establishing institutions of monitoring, advice and help; increasing minimum age for marriage; procedural rules for establishing the free will of the future spouses;¹⁰¹ increasing the age for family reunification; refusal of family reunification;¹⁰² compulsory language courses; financial support of aid organizations; information campaigns; shelter homes; cooperation with the relevant communities including religious organizations; withdrawal of residence permission; nullity of marriage, divorce, and non-recognition of marriage; opening procedure of nullity of marriages ex officio; introduction of forced marriage as a special crime; signing of statement on forced marriage at immigration entry.

6.4 Forced marriages and civil law: marriage law in progress

As this section shows when looking at Member States' national regimes, marriage law might provide for numerous instruments to combat forced marriages. Reference to the relevant civil legislations in the Member States cited is provided in Annex 3.2 together with their respective content.

Spain gives a valid example of a general approach to fight forced marriages found in essence throughout the European States: As a consequence of Spanish constitutional declaration about the dignity of each person (art. 10.2) and the fundamental right of men and women to marriage (art. 32.1), Article 45 of the Spanish Civil Code requires the consent of both future spouses to celebrate valid matrimony. Thus, Article 73.1 of the Spanish Civil Code declares the nullity of matrimony without the individual consent. Equally, the **Cyprus** Marriage Law 104(I)/2003 declares marriages voidable which have been concluded due to duress or without the consent of either party. This is a generally accepted European standard, as shown in Annex 3.2 which provides a cross-state analysis of the relevant laws and their content.

In a number of Member States, e.g. in **Austria, France or Germany, civil marriage is obligatory**. The recognition of religious marriage, marriage by non-state institutions and therefore also forced marriages within such environment is not

¹⁰⁰ Spanish General Direction of the Registers, Resolution of April 2, 1997.

¹⁰¹ For a cross-state comparison of the relevant civil law provisions on marriage, please refer to Annex 3.2

¹⁰² For a cross-state comparison of immigration rules on family reunification, please refer to Annex 3.3.

possible.¹⁰³ However, there is no evidence that in other Member States where religious marriage is accepted, this is a source of problems related to forced marriage.

It is criticised that **Austria's** private international law for non-Austrian citizens applies the law of origin (citizenship) of the future spouses as long as that law is not contrary to Austrian public order. Therefore it may happen that for marriages of non-Austrians under the age of 18 the otherwise necessary test of marriageability does not have to take place. Some national legal systems give preference to the law of residence over the law of origin or citizenship, instead. This is assumed to be more effective to achieve equal rights of men and women at marriage.¹⁰⁴ It may be preferable to apply the law of residence for marriages in private international law throughout.

In **Italy**, as an example of general European legal standards, the main features of marriage law which can limit the recognition of forced marriages are the requirement of a free consent (Art. 96 and 107 Civil Code) and, indirectly, the requirement of a minimum age to conclude a marriage (18 years; it can be lowered to 16 years with the authorization of the judge according to Art. 84 of the Civil Code). As for **Hungary**, a forced marriage could therefore be null. Also in **Greece**, a forced marriage would be inept according to family law (Art. 1375 of the Greek Civil Code). In **Germany**, forced marriage can be annulled; however, due to reasons of maintenance law such marriages usually will be divorced.

In the **United Kingdom**¹⁰⁵, if forced marriages take place abroad, there are public policy grounds for non-recognition under the Family law Act 1986. If the marriage takes place in England, there could be a nullity decree on the ground of duress. In the UK, no one can be forced to marry against their wishes. Both members of the couple must be aged 16 or over. Future spouses under the age of 18 must gain their parent's or guardian's written consent, otherwise it is a criminal offence, although the marriage would still be valid. Marriages involving spouses below 16 years of age are not recognised by law.

UK marriage law provides¹⁰⁶ for England and Wales: The Marriage Act 1949 (as amended) and the Matrimonial Causes Act 1973 govern the law on the validity of marriages in England and Wales. The minimum age at which a person is able to enter a valid marriage is 16 years old; a person under the age of 18 years may not marry without parental consent.¹⁰⁷ In broad terms a marriage conducted abroad in accordance with the proper formalities required by that country's laws will generally be recognised in England and Wales, provided both parties have the legal capacity to marry.

A forced marriage is valid (provided it complies with the formalities) until it is voided in civil proceedings for nullity. Section 12c of the Matrimonial Causes Act 1973 states that a marriage shall be voidable if 'either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise'. Duress is invariably a factor in forced marriages. The Court of Appeal has ruled that the test for duress for these purposes is simply 'whether the mind of the

¹⁰³ Information given by Prof. Potz, Vienna.

¹⁰⁴ Webservice der Stadt Wien, 28 March 2008, <http://www.wien.gv.at/vtx/rk?SEITE=020080328024>

¹⁰⁵ Information given by Prof. McClean, Sheffield.

¹⁰⁶ <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf>

¹⁰⁷ In England and Wales. They may marry again at 16 in England and Wales if they are a widow/widower (Section 11 (a) (ii) Matrimonial Causes Act 1973).

applicant (the victim) has in fact been overborne, howsoever that was caused'.¹⁰⁸ A petition for nullity (to annul the marriage) must be sought within three years.

In Scotland, the minimum age at which a person may marry is 16 years on the day of the marriage. Parental consent is not necessary. Both parties, however, must be capable of understanding the nature of a marriage ceremony and of consenting to marrying. Also under Scots Law, a marriage is void if either party was forced to marry against their will, for instance as a result of duress, or force and fear (true consent, and not merely the external appearance of consent, is essential for the constitution of marriage). A void marriage is regarded as never having taken place, however, a decree of nullity may be required from the Court of Session in order for the marriage to be treated as void and it is important, therefore, that appropriate legal advice is sought. A Scottish court can take jurisdiction to decide on the question of whether a marriage is void on the basis of lack of consent, regardless of where that marriage was performed. A forced marriage may also be dissolved by a decree of divorce, but many persons prefer the recognition of the reality of the dissolution that nullity gives.

In **Maltese** Law and in current legal practice the matter of “forced” marriages is only relevant when an annulment of a marriage is being sought. Art. 19 (1) of the Marriage Act (Chapter 255 of the Laws of Malta) reads: In addition to the cases in which a marriage is void in accordance with any other provision of this Act, a marriage shall be void (a) if the consent of the parties is extorted by violence, whether physical or moral or fear. The Civil Court, if it's a purely civil marriage, or the Ecclesiastical Court in the case of a church marriage, would have to examine and judge according to the circumstances whether the consent of any of the parties was “extorted” by fear, or violence (the old “shotgun marriage”). If, as sometimes happens, marriage was resorted to by a young man to avoid prosecution for corruption of minors, the Courts would allow the annulment. In the same manner, the Ecclesiastical Court would, in the same circumstances, if proved, declare a Church marriage as void and never having existed.

As is regularly the case in the Member States of the European Union, in **Sweden**, **according to the Marriage Act**, the wedding couple has to appear in person at the wedding and to publicly answer ‘yes’ to the question if they want to marry. Marriage for younger persons than 18 years is normally not accepted. A marriage abroad is not recognized in Sweden, if one of the spouses claims that it is a forced marriage. Neither is a marriage normally accepted if one of the parties is below 18 years of age. In respect to marriages abroad the Marriage Act was changed in this way in 2004.

The **Slovenian** marriage law (Zakon o zakonski zvezi in družinskih razmerjih) in its Article 13 says that the decision to marry has to be free. Art. 16 of the law prescribes that this declaration has to be made to the ‘competent state agency’ in the way that is prescribed by law. Article 17 also prescribes that ‘marriage is not valid without free consent’; and that ‘there is no free consent, if the consent was given under pressure or by mistake’. Only the spouses can make a request to declare such a marriage non

¹⁰⁸ 6 Hironi vs Hironi (1984) 4 FLR 232 CA. A similar judgement was found in the case of P v R [2003] 1 FLR 661. However duress was not established in the case of Singh v Singh [1971] 2 All E R 828. In that case a 17 year old Sikh girl went through a civil ceremony of marriage arranged by her family. She had not met the groom prior to the marriage and did not take to him. She subsequently refused to go through the Sikh religious ceremony. She applied for nullity on the grounds that she had only gone through the ceremony in obedience to her parents’ wishes and out of a sense of duty to them and Sikh customs. The court rejected her argument that her consent was vitiated by duress as there was no evidence that her will had been overborne or that her consent had been obtained through fear.

valid (within one year) (Art. 39). The age limit is 18 years (Art. 18). However, a social welfare centre can give permission also for younger person to marry (Art. 23). People thus are legally free to marry or not to marry. The state agency will ask them and nobody else. No previous marriages are recognised.

In **Estonia**, a court shall annul a marriage if consent for marriage was obtained against the will of a prospective spouse by fraud or duress.¹⁰⁹ After comparing the European provisions, it can be said that this is representative of a general European approach.¹¹⁰ Article 12 of the Estonian Constitution sets forth the principle of equality before the law and non-discrimination; Article 27 deals with the right to have a family and the equality of spouses. The main principles underpinning family law are: 1) freedom to marry (the prerequisite for marriage is mutual consent of prospective spouses) captured in the Article 27 of the Constitution and § 2 (1) of the Family Law Act. The Family Law Act § 3 also sets limits to the age of marriage: A person who has attained eighteen years of age is of age to marry. A minor between fifteen and eighteen years of age may marry with the written consent of his or her parents or guardian. As other Member States, such as **Hungary**, **Estonia** provides for a period of rethinking before contracting marriage: According to § 1 (3) of the Estonian Family Act, a marriage shall be contracted not earlier than one month and not later than three months after submission of an application to a vital statistics office by the prospective spouses unless special circumstances give rise to a different decision.

Also in **Croatia**, before entering into marriage, the future spouses freely answer whether they want to marry to each other. Formerly, marriage by force was an explicit obstacle to enter the marriage and the reason for the annulment of marriage. Since no such situations were noticed, since 1998 (Family Code, as well the latest Family Code 2003) forcing marriage is not provided in a Family Code anymore. If it happens that one of the spouses is forced to enter into marriage, he or she may divorce his or her marriage. Forced marriage, if there are any, may be divorced according to the provision of § 43 Family Code - if marital relations have been seriously and lastingly disturbed, or if a year has passed since the marital union ceased to exist, or if both spouses consensually apply for a divorce. To prevent forced marriage there is an obligation for the registrar to ask the bride and the groom by name if they agree to contract marriage to each other (§ 18 sec. 3 Family Code).

In **Serbia**, according to the Serbian Family Law, the marriage conducted under the influence of physical or mental force will be nullified. The nullifying court decision will be effective *ex nunc*. If the nullification is not demanded during the period of one year after the marriage is conducted, the marriage will be convalidated. Having this in mind, forced marriages are not legally recognized under Serbian law, but they still effectively exist in some regions, communities and social areas, such as in rural areas or among Roma people. Most of the forced marriages are convalidated, because there is a lack of legal culture in the places where forced marriages still exist, so that the nullification is never demanded in due time.

In the Former Yugoslav Republic of **Macedonia**, according to Article 15 of the Law on the Family, marriage can be entered into by two persons of the opposite sex by freely stated wishes in front of a competent body in a manner determined by this law. Freely expressed wish to get married, given without coercion and intimidation is thus

¹⁰⁹ § 33 Family Law Act (consolidated text April 2005) Estonia;
<http://www.legaltext.ee/et/andmebaas/tekst.asp?Loc=text&dok=X1017K7&keel=en&pg=1&ptyyp=RT&tyyp=X&query=perekonna>.

¹¹⁰ For a cross-state comparison of the relevant civil law provisions on marriage, please refer to Annex 3.

one of conditions for marriage to be legitimate, i.e. recognized by the law. According to Article 19 of the Family Law, the marriage is not legitimate if it was realized by force or in error. Under the family law of Macedonia, marriage can not be entered into with a person under 18 years of age. The competent court can allow the marriage to be entered by a person who has reached 16 years of age if it is proved that this person has attained the physical and psychological maturity needed for the carrying of the rights and obligations stemming from the marriage, upon an opinion of a health institution and professional assistance of the centre for social work. Thus, child marriages (i.e. under 16 years) are not allowed or recognized. Under Article 197 of the Criminal Code of the Republic of Macedonia, extra-marital life with a juvenile is punishable offence. Formal and strict requirements in the procedure for entering into the marriage serve as legal measures taken to prevent forced marriages. According to Article 23 of the Family Law persons who want to get married must submit a written application to the body competent for keeping the Marriage Register, accompanied by the necessary documents. The official of the Registry is obliged to check from the statements of the persons if there are any impediments for marriage (force, intimidation, error, existence of previous marriage, underage, mental illness, blood relationship etc.). The official is obliged to refuse the conclusion of the marriage if he or she finds that such marriage is not allowed by the law. Marriage entered by force can be annulled by the court, on request of the spouse who was forced into the marriage. The procedure for annulment of the marriage entered by force can be initiated within one year from the termination of the threat that forced the person into marriage.

Also in **Albania**, free consent of the future spouses for marriage is required (article 9 of Family Code). This is not a matter of a mere consent, simulated or under pressure, but of free will, with a full compliance of inner and external will. Otherwise, within the terms provided by law, the marriage will be declared invalid. On the other hand, law determines the moment of the declaration of such consent and location and the person to whom it is done.

However, as the case of France shows, the legislation used as a particular instrument to combat forced marriage can be made more explicit. France recently has introduced a number of steps to prevent forced marriages. The main step against forced marriage in France was the increase of the age of marriage for female spouses. Article 144 (as amended on 4 April 2006) reads: ‘The male and the female spouses cannot contract marriage until the completion of eighteen years’. Before the amendment of the civil code in 2006, the minimum age for the female was 15 years, and for the male 18 years, the age of majority.

Another step taken to effectively prevent forced marriages was the amendment of the provisions guiding the hearing of the future spouses by the public authorities. While other Member States have equivalent rules or practice, the explicit and transparent laying out of these rules can serve as a best practice example for the day to day practice to prevent forced marriages. Article 63 of the French Civil Code (as amended on 15 November 2006) now reads: ‘Before the celebration of a marriage, an officer of civil status shall give public notice of it by way of a bill stuck up on the door of the town hall. This notice shall state the first names, surnames, occupations, domiciles and residences of the future spouses, as well as the place where the marriage is to be celebrated’.

Irrespective of the application of the provisions of Article 169, an officer of civil status may proceed to the public notice provided for in paragraph 1, or, in case of an

exemption from public notice, to the celebration of the marriage, only after: ‘2. - hearing the future spouses jointly, except in case of impossibility or where it appears, upon examination of the file, that said the hearing is not necessary with respect to Article 146 and 180. If he deems it necessary, the officer of civil status may also require to have a separate talk with one or the other of the future spouses.’

The hearing of minor future spouses takes place without the presence of their father and mother or their legal guardian and his future spouse. It may be noteworthy that a similar amendment has been suggested for Switzerland.¹¹¹ Furthermore, Article 146-1 of the French civil code (as amended on 24 August 1993) provides that: ‘The marriage of a French person, even where contracted in a foreign country, requires the physical presence of the person concerned.’

7. THE CASE OF ROMA: MARRIAGES AND DISCRIMINATION

7.1 A variety of Roma marriage customs

Reports available about Roma marriage customs show differing pictures. **It appears however that when child marriage occurs, it is not a specificum of the Roma as such, but rather an issue of an overall regional situation.**

For instance, the Italian based ‘Gesellschaft für bedrohte Völker’ in South-Tyrol has published a study in 1995 that gives some description of Roma marriage.¹¹² The study indicates that ‘Roma formerly only married among each other. Marriage within the same group is widespread and forms part of Roma tradition. Moreover, Roma still marry at a relatively early age. Formerly, in some groups marriage with a non-Roma meant the expulsion from the group. This has been a sort of self-defence of the group. A woman could be purchased by exchange, buying or sometimes by abduction. The price was bargained by the relevant families’. However, as the study explains, such marriage customs are only of limited relevance, today. Girls object to such traditions and want to choose their husbands themselves. Also, marriages with non-Roma are not an exception in some countries any more.

As Milena Hübschmannová writes in an article of 2002 in Rombase¹¹³ about the Romani Bijav¹¹⁴: “A bijav is not a requirement for confirming the bond of marriage. The consecration of a couple's living together is a mangavipen. A bijav is a social affair. It can be arranged even years after a mangavipen - that is, when the families of the couple have enough money so the wedding party can display their social prestige. While a mangavipen takes place in the narrow family circle, hundreds of guests may be invited to a bijav. Both – bijav and mangavipen – are ceremonies which bind partners together until death parts them. During the bijav, the wedding ceremony, the couple are married by the čhibalo (the mayor - literally, "the spokesman") who is chosen ad hoc by relatives of the young couple. The first wish for the newlyweds is that they will grow old together – and that they will remain together all of their lives.”

¹¹¹ Strafbarkeit von Zwangsheiraten und arrangierten Heiraten: Bericht des Bundesrates in Erfüllung des Postulates 05.3477 der Staatspolitischen Kommission des Nationalrates vom 9.9.2005, 14.11.2007, p. 2.

¹¹² Martha Verdorfer, Unbekanntes Volk. Roma und Sinti, Texte zum Kennenlernen, Informationsheft für Jugendliche, Gesellschaft für bedroht Völker – Südtirol (ed.), 1995, <http://www.gfbv.it/3dossier/sinti-rom/de/rom-de.html>.

¹¹³ <http://romani.uni-graz.at/rombase/>; Rombase offers information on the socio-cultural and socio-historical situation of the Roma. Rombase has been carried out with the support of the European Community in the framework of the [Sokrates programme](#) (87757-CP-1-2000-1-AT-Comenius-C2) and in cooperation with the [Phonogrammarchiv, Austrian Academy of Sciences](#).

¹¹⁴ The wedding or wedding ceremony

The Patrin Web Journal of 2000¹¹⁵ says about Romani marriage customs and traditions: ‘Engagements and marriages are great and joyous events for the Roma, signifying the extension and continuation of the family... Marriage signifies a change in position of the married couple in Roma society as full and productive members of the community. All Roma are expected to marry’. Patrin writes: ‘In spite of myths of Roma immorality, most Roma follow strict rules of sexual behaviour. He or she is expected to marry someone within their particular tribe and most Roma conform by marrying within their group. Even with respect to other Roma, permissible marriage choices may be restricted. This is a way of maintaining tribal and social purity. If a Roma male marries a gadji (i.e. a non-Roma), his community may eventually accept her, provided that she adopts the Romani way of life. But it is a worse violation of the marimé code for a Roma female to marry a gadjo, because Roma women are the guarantors for the survival of the population. In the case of a mixed marriage, many tribes consider the children Roma only if the father is Roma... Traditionally, marriages for Roma have occurred early, after age nine but usually before age fourteen. Gajikane influence has undermined this tradition in many countries. Many Roma tribes still maintain the institution of bride price. For many Roma tribes it is the parents, and not the young people, who arrange the marriage. The prospective bride and groom might be consulted, but their opinions are rarely considered in making a final decision. According to these tribes, it is an essential and important duty of the parents to find a bride suitable for their son. Because of integration into non-Roma societies, many young couples have opposed arranged engagements and marriages and have eloped. Elopement consists simply of the couple leaving together for a period of time. When they return they are chastised and sometimes pay a nominal fine. They usually are accepted as a married couple in time...’

Patrin reports: ‘The wedding itself, called the abiav, is largely a symbolic act... Though Roma conform to local laws and customs in the countries in which they marry, the non-Roma religious or civil ceremonies are formalities for them. The mere fact that two people have agreed to live together and share their lives together constitutes marriage, and no formal ritual is required. This does not mean that they do not take marriage seriously. They simply do not believe in the importance of a formal wedding ceremony under the jurisdiction of a church or a state. Ordinary civil and religious marriages are becoming more frequent, if only to round off a traditional ceremony’.¹¹⁶

The reports about Roma marriage may differ in specific detail especially concerning the age of Roma girls when considered ready for marriage. The reports range from age 9 to age 16.¹¹⁷ Yet, any such early age of marriage is well before reaching the age

¹¹⁵ Patrin Web Journal; <http://www.geocities.com/Paris/5121/marriage.htm>

¹¹⁶ Cf. also Thomas Acton and David Gallant, *Threatened Cultures. Romanichal Gypsies*; Wayland Publishers, 1997; Angus Fraser, *The Gypsies*, Cambridge: Blackwell, 1992; Howard Greenfield, *Gypsies*, New York: Crown Publishers, 1977; Bart McDowell, *Gypsies: Wanderers of the World*, National Geographic Society, 1970; Anne Sutherland, *Gypsies: The Hidden Americans*, Reprinted Prospect Heights: Waveland, 1986.

¹¹⁷ A report of 2000 about Roma adolescence in the Czech Republic says: ‘The childhood and adolescence of Romani children ends when they begin their own families. One Romani proverb says: Sit your daughter in a chair and if her feet touch the ground, she’s ready for marriage... Romani girls are prepared for marriage between 14 and 16 years of age, which explains the young age of Romani wedding guests, but... the young Romani girls are more socially prepared for marriage than biologically.

Parents entrusted their adolescent daughters to their future husbands. The girls mostly had to marry men who their parents chose for them... The daughter’s duty was to enter into a good and well-advised marriage, thus bringing together two families and by doing so increasing her family’s prestige... It happened, of course, that two young people would get married against the will of their parents, but this didn’t always cause conflicts. Most of these

of possible marriage in most of the Member States of the European Union. **Whenever child marriage happens below the legal age**, within the Roma or any other community, the spouses will not be married in legal terms and **the ‘marriage’ is outside the law.**

7.2 Member States policies on Roma marriages

Roma marriage is not an issue in all Member States for a number of reasons. In some European States, Roma tradition in marriage may well conform to overall tradition. It also happens, like in **Malta**, that there is no Roma population at all, and in **Hungary** - since the 1950ies - there are no migrant Roma any more. In the **United Kingdom**, there is no special category for Roma marriage, so if they occur outside general law most such marriages will be non-legal. Also in **Sweden**, Roma marriages are not accepted as marriages, unless the wedding takes place in front of a competent authority and under the regulations (i.e. age of the spouses) that are stipulated for all marriages.

In **Estonia**, a study focused on Roma women and labour market is going to be published by early 2009. According to one of the researchers¹¹⁸, 15 women from different age groups were interviewed. Older women reported that forced marriages had been the custom in the old days. None of the respondents, however, had experienced it by themselves. Thus, the result is that forced marriage could not be considered as a common practice in the Estonian Roma community today, but something that had happened in the past as the respondents have heard. According to unofficial statistics there are about from 700 or 1000 up to 1500 Roma in Estonia.¹¹⁹ The Family Law Act applies equally to all. Currently there are no exemptions from law. Only the marriages conducted by officials following the official procedure are considered valid marriages in Estonia, all other forms are forms of open partnership.

For the **Czech Republic** it is reported that although some members of the Romani community married before reaching the legal age of 18, underage marriage was generally not a significant issue.¹²⁰ In **Austria**, child marriage in Roma communities is not officially recognized at all. However, it is not excluded that cases of child marriage happen. There seem to be no studies in the matter. According to the US state department, it appears that some male immigrants married underage girls in their home countries and returned to Austria with them.¹²¹

In the Republic of **Cyprus**, Roma marriage is governed by the same law governing the marriage of all Cypriots or non-Cypriots who wish to perform marriage in Cyprus. Thus, only people over 18 years of age are allowed to marry according to the procedure specified by law. People over 16 but below 18 years of age might be allowed to perform marriage if their parents consent and there are serious grounds justifying such marriage, such as pregnancy. So any child marriages, if they occur at

couples had siblings helping them elope, and if they spent the night together, there was nothing else to do but arrange a wedding...’

¹¹⁸ Information given by Margaret Tali to Mr. Ringo Ringvee.

¹¹⁹ Estonian Bureau of Lesser Used Languages; <http://www.estblul.ee/EST/Keeled/mustlaskeel.shtml>.

¹²⁰ See Czech Republic Country Report on Human Rights Practices of the US State Department 2007; <http://www.state.gov/g/drl/rls/hrrpt/2007/100555.htm>.

¹²¹ See Austria Country Report on Human Rights Practices of the US State Department 2007; <http://www.state.gov/g/drl/rls/hrrpt/2007/100547.htm>.

all, are outside the law. There was one report from a private researcher of child marriage in the Cyprus Roma community.¹²²

In the Republic of **Slovenia**, again, 'Roma marriage' is not a special term in marriage law. Thus, the Family Law Act applies equally to all. Currently there are no exemptions from law, if people come and marry according to civil legal rules, they are married, if not, they are not. Child marriage, as is reported, occurred within the Romani community; however, it was not a widespread issue.¹²³

In some Member States, however, reports give a different picture about the social relevance of Roma traditions. In **Bulgaria**, although no official statistics were available, the State Agency for Child Protection reported that child marriage was relatively rare nationwide but was common in the Romani community. The agency also voiced its concern that arranged marriages, a traditional aspect of Romani culture, were resulting in trafficking in persons.¹²⁴ Similarly, in **Romania** the legal age of marriage is 18, but girls as young as 15 may marry in certain circumstances. Illegal child marriage was common within certain social groups, particularly the Roma. While there were limited statistics available on the extent of the problem, a recent UNDP survey found that 35 percent of Romani girls were married before reaching the age of 16.¹²⁵ In January 2007 the Romanian government's National Roma Agency recommended that the government devise a plan to increase the Romani population's knowledge about child protection and family legislation. An information campaign targeting traditional Roma communities began in March 2007.¹²⁶

The European Roma Rights Centre (ERRC) has issued a statement in 2003 concerning the Wedding of the Romani girl Ana Maria Cioaba in Romania¹²⁷: A decision of the Child Protection Service in Sibiu, Romania, separated the girl, purported to be between the ages of 12 and 14 (depending on the media source quoted), and Mihai Birita, a 15-year-old Romani boy. The decision, agreed to by their parents, stated that both children must return to their parents' homes, to go to school and attend counselling sessions at the state Child Protection Service until they reach the legal age of marriage. Ms Cioaba was reportedly coerced into matrimony by members of her family. Investigation was begun following¹²⁸ demands by Member of the European Parliament Baroness Emma Nicholson, an EU envoy in Romania. The question to what extent Ms Cioaba had been coerced into marriage remained un-

¹²² See Cyprus Country Report on Human Rights Practices of the US State Department 2005; <http://www.state.gov/g/drl/rls/hrrpt/2005/61643.htm>.

¹²³ See Slovenia Country Report on Human Rights Practices of the US State Department 2006; <http://www.state.gov/g/drl/rls/hrrpt/2006/78839.htm>; Slovenia Country Report on Human Rights Practices of the US State Department 2007; <http://www.state.gov/g/drl/rls/hrrpt/2006/78839.htm>.

¹²⁴ US State Department Romania Country Report 2007; <http://www.state.gov/g/drl/rls/hrrpt/2007/100552.htm>.

¹²⁵ US State Department Romania Country Report 2006; <http://www.state.gov/g/drl/rls/hrrpt/2006/78834.htm>; US State Department Romania Country Report 2005; <http://www.state.gov/g/drl/rls/hrrpt/2005/61670.htm>.

¹²⁶ US State Department Romania Country Report 2007; <http://www.state.gov/g/drl/rls/hrrpt/2007/100580.htm>.

¹²⁷ <http://groups.yahoo.com/group/balkanhr/message/6024>; the European Roma Rights Center, based in Budapest, Hungary, is an international public interest law organisation which monitors the rights of Roma and provides legal defence in cases of human rights abuse; cf. <http://www.errc.org>; cf. also: Jeff Timmerman, When Her Feet Touch the Ground: Conflict Between the Roma Familistic Custom of Arranged Juvenile Marriage and Enforcement of International Human Rights Treaties, http://www.law.fsu.edu/journals/transnational/backissues/issue13_2.html.

¹²⁸ Associated Press, Compelled To Wed At 15, Gypsy Bride Buries Dream of Studying Medicine (June 28, 2003), at http://www.usatoday.com/news/world.2003-06-28-Gypsybride_x.htm; cf. also: Jeff Timmerman, When Her Feet Touch the Ground: Conflict Between the Roma Familistic Custom of Arranged Juvenile Marriage and Enforcement of International Human Rights Treaties, http://www.law.fsu.edu/journals/transnational/backissues/issue13_2.html.

elucidated. Reportedly, widespread public discussion of the issue provided an opportunity for young Romani women to express their views on the issue.

The incident was broadly covered in European media.¹²⁹ According to a BBC-report, the girls' family spokeswoman stated that the children spent the wedding night together; 'it was the deal. Nobody asked her whether she wanted it'. The spokeswoman said that the girl had begun to 'resign herself to her fate'. According to a government official, the marriage is not recognized by the Romanian authorities. The Roma community's Member of Parliament, Madalin Voicu, had reportedly called the wedding an 'affront' to the Roma community: 'A 12-year-old child cannot understand the notion of marriage and the duties appertaining to it'.

According to sources, the controversial marriage was the second to make major international headlines in a six month period. In May 2003, fifteen-year-old Romani bride Narcisa Tranca was reluctantly married to another Roman juvenile. In an evaluation of the situation the US scholar Timmermann points out¹³⁰: 'Culturally speaking, her parents faced an unthinkable paradox: If Narcisa hadn't married, her father said, she would have faced imminent 'abduction by potential suitors who wouldn't wait for negotiation.'¹³¹ Juvenile marriage is prototypical of time-honoured Roma tradition, left alone for centuries by governments more concerned with state-sanctioned positive discrimination against Roma rights in other social forums." Timmermann continues: From an outsider's perspective, the Gypsy marriage process involves colourful, ornate displays of courtship and is tainted with implications of possessory interest. This perception is further jaded by internalized discrimination and criminalization of Gypsy ethnicity, an imploding relationship...The process of juvenile arranged marriage is culturally self-contained and affects only Roma youth. In this sense, it poses a unique dilemma: while it is undeniably true that Roma youth are being denied the right to choose whom and when to marry in some instances, the Roma community itself openly embraces juvenile arranged marriage as a protectionist strategy and means of cultural, economic, and societal preservation and autonomy.¹³² According to press reports, similar incidents still occur: After the family of a 14-year-old groom cancelled his wedding to a 12-year-old bride a fight broke out between the two families of Roma in Romania¹³³. That event reportedly caused about 200 people to fight each other with fists, knives swords and guns in the Romanian village of Sinesti, where 12 people were injured - but no one was killed. According to reports, the fight broke out on Wednesday 27 February 2008, because the bride's family was unhappy over the groom's decision to cancel the wedding.

In **Greece**, marriages between Roma are recognised as long as they are performed according to law. For child marriages a court decision is always requested. This decision will permit marriage between underage couples only if it judges that this is in the best interest of the children. In practice there are few cases that reach the court.

¹²⁹ E.g. <http://news.bbc.co.uk/2/hi/europe/3154994.stm>.

¹³⁰ Jeff Timmerman, When Her Feet Touch the Ground: Conflict Between the Roma Familistic Custom of Arranged Juvenile Marriage and Enforcement of International Human Rights Treaties, http://www.law.fsu.edu/journals/transnational/backissues/issue13_2.html.

¹³¹ Associated Press, Activists Condemn Gypsy Girl's Arranged Wedding In Romania (Sept. 30, 2003), at <http://www.cnn.com/2003/WORLD/europe/09/30/romanian.Gypsy.ap/index.html>.

¹³² Jeff Timmerman, When Her Feet Touch the Ground: Conflict Between the Roma Familistic Custom of Arranged Juvenile Marriage and Enforcement of International Human Rights Treaties, http://www.law.fsu.edu/journals/transnational/backissues/issue13_2.html.

¹³³ <http://www.wayodd.com/marriage/1/c/131/>.

Usually the Roma community does not address the courts in order to obtain the permission. In Greece, as has been reported, child marriage was common within the Romani community. Additionally, there were limited numbers of marriages of persons under 18 among the Muslim minority in Thrace and Athens. In 2006 the Council of Europe's commissioner for human rights and the UN special rapporteur reported that they were informed of cases of both early marriages and marriages by proxy. The state-appointed muftis, who may apply Shari'a law in family matters, noted that they did not allow marriage of children under age 15. The government has youth centres, parent counselling, and programs targeted at Romani and Muslim communities that address poverty and lack of education, two factors that were believed to contribute to child marriage.¹³⁴

In Madrid, **Spain**, the police reportedly prevented a forced marriage of a possibly Romani girl of 13 with a 15 year old in August 2007.¹³⁵ As is reported from **Bosnia and Herzegovina**, in certain Romani communities, girls married between the ages of 12 and 14. Apart from efforts to increase Romani participation in education, there were no programs aimed specifically at reducing the incidence of child marriage.¹³⁶ In **Montenegro**, child marriage has been identified as a problem, particularly among Roma. In the Roma community, boys and girls generally married at an early age, with girls marrying somewhat earlier than boys. The problem was generally ignored by the government.¹³⁷ Similarly, in **Serbia**, child marriage was problematic in some communities, particularly among Roma and in rural areas of southern and eastern Serbia. In the Romani community, boys and girls generally married between the ages of 14 and 18, with 16 as the average; boys generally married a few years later than girls. Child marriage was most common among Muslim Ashkali, most of whom came from Kosovo and were living in other parts of the country.¹³⁸ Most Roma marriages today are conducted in accordance with the Serbian law. Nevertheless, there are cases reported of customary marriages, with characteristics such as the purchase of the bride and the 'marriage' of minors.

The Family Code of **Croatia** does not encourage anybody to enter into forced marriage, regardless of his or her ethnic (including Roma) status. It is reported that Roma people arrange even forced marriages of children, but since the law does not permit to marry before 18 years of age (exceptionally with 16 if the court so allows) these marriages are legally not possible. Such relation is not considered as a legal marriage and has no legal consequences. There are different governmental projects that include the education of Roma people, aiming inter alia at preventing child marriages and forced marriages.

In the Former Yugoslav Republic of **Macedonia**, no special procedures for Roma marriage exist. The same conditions and the same procedures for marriage apply to all citizens of the Republic of Macedonia regardless of their ethnic origin. Even if there

¹³⁴ Cf. Greece Country Report on Human Rights Practices of the US State Department 2007; <http://www.state.gov/g/drl/rls/hrrpt/2007/100562.htm>.

¹³⁵ El Pais, http://www.elpais.com/articulo/espana/Policia/impide/matrimonio/forzado/menores/Vicalvaro/elpepuesp/20070829elpepunac_6/Tes?print=1.

¹³⁶ Cf. Bosnia and Herzegovina Country Report on Human Rights Practices of the US State Department 2007; <http://www.state.gov/g/drl/rls/hrrpt/2007/100551.htm>.

¹³⁷ Cf. Montenegro Country Report on Human Rights Practices of the US State Department 2007; <http://www.state.gov/g/drl/rls/hrrpt/2007/100575.htm>.

¹³⁸ Cf. Serbia Country Report on Human Rights Practices of the US State Department 2007; <http://www.state.gov/g/drl/rls/hrrpt/2007/100583.htm>.

are special practices and procedures of marriage within the Roma community, such marriages remain outside the law, unless conditions for marriage determined by the family law are met. Also, marriages concluded according to religious customs do not take any legal effects, i.e. are not recognized as legitimate marriages.

For **Albania**¹³⁹, Roma women are said to be the most neglected and marginalized among the Albanian women: Girls drop out the school earlier than boys and very often to early marriages. In general, the poor and/or violated Roma women do not have access to the legal and judicial system or any psychosocial assistance. One of the main reasons explaining the lack of access is the low level of information in legal rights and especially on the rights foreseen in the Family Code relating to the right of marriage, parental responsibility, protection from domestic violence, registration of marriage, registration of children, age of marriage, the consent for an available marriage, etc. The Albanian Centre for Legal Civic Initiatives treated social and legal problems in three workshops organized together with the Roma community in Tirana, Llakatund (Vlora) and Levan (Fier) in 2007. A questionnaire included the question on the age of marriage of the participants. It showed that 28.5 % of the participants in Levan were married at the age of 12-18 years. In the workshop of Llakatund 40% of participants were married at the age of 12-18 years.

8. THE SOCIAL DIMENSION AND THE ROLE OF EDUCATION

A study initiated by the **German** Federal Ministry for Family, Elderly People, Women and Youth¹⁴⁰ evaluating practical work of combating forced marriage in the Federal Republic of Germany is based on statistical data of 331 women between 12 and 22 years of age who were victims of forced marriage. These women were taken care of by the Berlin crisis institution for young female migrants 'Papatya' which provides help for young female migrants faced with domestic violence and forced marriage. The study found that here forced marriage occurs in a highly difficult family and social environment. **The families face a difficult economic situation; more than one third of the fathers received unemployment aid or social aid.** Often, the families are confronted with addiction problems; such **addiction problems** occurred in more than 23 % of the families and alcoholism was the predominant problem, but also gambling addiction and drug addiction were relevant. Almost all of the curriculum vitae analysed entailed reports about **violence** within the family. Religious motives did not play any relevant role in the curriculum vitae. This is a strong indication that **religion is not a major factor in forced marriage**. An important reason for forced marriage, however, is a traditional-patriarchal understanding of honour. The parents were in intense fear for the honour of the family when the daughter was seen from a certain age onwards together with a young man or even had a boy friend. Other reasons were a traditional view on marriage and family life. Furthermore, the wish to enable a person to migrate into Germany played a role. Finally, also a financial problem could be involved.

There is strong evidence that women threatened by forced marriage often come from **families with intense social problems such as lasting unemployment, divorces,**

¹³⁹ Information given by Prof. Aureli Anastasi, Tirana.

¹⁴⁰ BT-Drs. 16/8121; study conducted by Rainer Strobl and Olaf Lobermeier from the Institute proVal in Hannover.

and sometimes alcoholism; for such families the strict control of the daughters seems to be one of the few left options to upkeep their reputation.¹⁴¹

In **Germany**¹⁴², most girls and young women forced into marriage come from a Turkish or Kurdish environment. However, also Albanians, Pakistani, Indians or girls and women of Moroccan origin are affected. **The phenomenon is not limited to the field of Muslim culture.** Cases have also occurred in southern Italy or Greece. Forced marriages happen in a variety of religious or ethnic groups and transgress societal classes and casts. In Germany, there are so many Turkish girls and women affected, because Turks are the largest group among immigrants. The study highlights three different reasons for forced marriages:

1. Migrants look for girls and young women in their home country (so-called **'import-brides'**) in order to marry them here. This is always the result of arrangements between the in Germany resident (part)-family of the girl and the family of the man abroad. Usually, the families have known each other for a long time, because they either belong to the same group of relatives or come from the same village. These women are particularly defenceless, since they do not know the German culture or the German language and also do not have anybody who supports them or whom they can confide to.

2. A second form of forced marriage is called **'holiday-marriage'**: Foreign girls are made engaged or are married in their home country where they usually spend their holidays without being informed beforehand. Their family does not tell them about the real aim of the holidays. These girls then stay against their will abroad (marriage-abduction). Sometimes, these girls then are the second or third wife. Especially in rural environments they are used as labour force.

3. The third form of forced marriage is the **'marriage for immigration ticket'**. This means that a woman with a secure status in Germany is promised by her own family to a fellow countryman who still lives abroad. This often happens during a holiday in the country of origin. In this case the woman is a means for the legal immigration of her husband. The arrangement is made without informing the woman.

Often, **forced marriage also is the attempt to discipline the daughters** who grow up in a western society and do not want any more to fit in old traditions. Here, maintaining traditional structures of power in the family is at stake. In many cases there also is a financial aspect in form of a bridal price. Cases of marriage between near relatives such as cousins occur. Here, the idea of strengthening the family and the aim to maintain influence on the spouses dominate. In this case, goods and money related to the marriage remain in the family.¹⁴³

Some argue that forced marriage in Turkish migrant communities in Germany is an expression of cultural authoritarianism coined by Islam.¹⁴⁴ It is also argued that stereotype views of male and female roles in rather uneducated traditional Turkish

¹⁴¹ Corinna Ter-Nedden, Zwangsverheiratung: Erfahrungen in der praktischen Unterstützung Betroffener und Empfehlungen für Politik und Verwaltung, in: Bundesministerium für Familie, Senioren, Frauen und Jugend (ed.), Zwangsverheiratung in Deutschland, 2007, p. 348, http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-20Forschungsreihe-Band_201.property=pdf.bereich=,sprache=de.rwb=true.pdf.

¹⁴² BT-Drs. 16/1035, p. 6.

¹⁴³ BT-Drs. 16/1035.

¹⁴⁴ Necla Kelek, Heirat ist keine Frage, Bundesministerium für Familie, Senioren, Frauen und Jugend (ed.), Zwangsverheiratung in Deutschland, 2007, p.18; http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-20Forschungsreihe-Band_201.property=pdf.bereich=,sprache=de.rwb=true.pdf.

families and the focus on gender roles in education can be at the root of forced marriage.¹⁴⁵ There seems to be evidence that the public in countries with a stronger ethnic-religious diversity in their migrant population relate forced marriage not exclusively to religious reasons, but rather with a **complex socio-economic, demographic and generation-type background as well as to the level of education.**

In **Great Britain**, according to the Luton study¹⁴⁶, the largest communities which display a strong commitment to a sense of **‘traditional’ values** are South Asian – Pakistanis, Bangladeshis and Indians - and so the majority of forced marriages take place among these communities. It happens among other minorities as well, especially from Africa, the Middle East and parts of Eastern Europe, but the numbers are smaller. 65% of the cases handled by the Forced Marriage Unit are from families of Pakistani origin, 25% of Bangladeshi origin and the remaining 15% of other origins. The overwhelming majority of victims are female – 85% of the Forced Marriage Unit’s cases.

Most cases of forced marriage in Luton arise from the Kashmiri community.¹⁴⁷ This can easily be explained by the fact that the Pakistani/Kashmiris are the largest minority ethnic group in Luton and many women in this group face a serious language barrier. The next largest group is Bangladeshi, who face similar issues. Both of these **groups are from traditional backgrounds and their family values and cultures are still closely linked to their rural heritage.** They are mainly Muslims and deeply religious. Much fewer cases are from the Indian community which is smaller in size than the Kashmiris and Bangladeshis and their backgrounds are also different. The Indian Sikh community has a significant presence in Bedford where a culturally sensitive women’s refuge is run by an Indian woman. Luton also has a small number of cases arising from South African and Nigerian backgrounds. Some cases from the Somali community have also been surfaced.

According to Böhmecke’s study on honour killings¹⁴⁸, forced marriage with a partner from the same culture can – in the opinion of those who apply the force - **ensure a bond with the old home country.** It is also important in migration that a Muslim woman has to marry a Muslim man, since otherwise according to traditional understanding the marriage is not valid or not recognized. Also, early marriage of a girl is regarded as a guarantee against premarital relationships and as a means to maintain the influence of the parents so that the girl will not become too westernized.

¹⁴⁵ Ahmet Toprak, Geschlechterrollen und Geschlechtererziehung in traditionellen türkischen Familien. Verheiratung des Mannes als Disziplinarmaßnahme, Bundesministerium für Familie, Senioren, Frauen und Jugend (ed.), Zwangsverheiratung in Deutschland, 2007, p.18, http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung_20Forschungsreihe-Band_201.property=pdf,bereich=,sprache=de,rwb=true.pdf.

¹⁴⁶ Cf. Nazia Khanum, Forced marriage, family cohesion and community engagement: national learning through a case study of Luton, March 2008, Equality in Diversity, p. 9; <http://www.luton.gov.uk/Media%20Library/Pdf/Chief%20executives/Equalities/Forced%20Marriage%20Report%20-%20Final%20Version.pdf>.

¹⁴⁷ Cf. Nazia Khanum, Forced marriage, family cohesion and community engagement: national learning through a case study of Luton, March 2008, Equality in Diversity, p. 44; <http://www.luton.gov.uk/Media%20Library/Pdf/Chief%20executives/Equalities/Forced%20Marriage%20Report%20-%20Final%20Version.pdf>

¹⁴⁸ Ehrenmord, Myria Böhmecke (TERRE DES FEMMES); http://www.frauenrechte.de/tdf/pdf/EU-Studie_Ehrenmord.pdf.

It is important not to generalize. Not every woman with a migration background is threatened with forced marriage or honour killing.¹⁴⁹

The studies show that forced marriage is not an issue exclusively linked to a geographical origin of groups. It is **linked to traditional hierarchical power-relationships between men and women and parents and children**. It predominantly involves families where parents come from rural traditional backgrounds and women and children live in a culture of inequality. It is a culture where men have a status superior to other members of their families.

Furthermore, forced marriage is not linked to one specific culture nor is it a phenomenon of one specific religion. Religion at times is used by communities to legitimize an existing tradition of forced marriage.¹⁵⁰ The perpetrators do not regard their actions as being illegitimate. In some cases one may presume that they are not even aware that forcing someone into marriage is illegal, not to say illegitimate. Certainly, **education is one of the most important steps to be taken**.

One can probably rightly say¹⁵¹ that, **historically, forced marriage was common among all or at least most communities**. The old expression ‘shotgun wedding’ testifies the use of force in marriage in the past in Europe as do a number of plays written by Molière, most notably ‘Le mariage forcé’ of 1664. The use of force to make someone marry has become less common within European societies as a result of changes in relationships between parents and children, and between men and women which includes greater readiness to accept lone parenthood. Arranged marriages are now unusual throughout the European Union and therefore the option of positively forcing someone into marriage rarely arises.

9. HONOUR KILLINGS: A SURVEY ON DATA

Data shows that forced marriage is in a number of cases linked with honour killings, although it is not a predominant cause for this crime. Forced marriage and honour killing are two different, distinct social topics. Each of them constitutes a personal and social disaster of its own. They can occur separately and are not necessarily linked with one another. Murder or the threat with murder because of someone breaking away from forced marriage may have its cause in jealousy, anger or injured pride, nonetheless called honour. However, honour killing and forced marriage seem to be in a substantial number of cases a consequence of specific circumstances. The data indicate that these circumstances result from a traditional-patriarchal societal setting and occur predominantly in socially weak circles. Religion cannot be regarded as a ground for honour killings.¹⁵² The attempt to force someone to conclude or uphold a forced marriage can and sometimes does result in honour killing. **Honour killing can be a reaction to resistance against forced marriage or may be committed to prevent a marriage that is considered**

¹⁴⁹ Ehrenmord, Myria Böhmecke (TERRE DES FEMMES); http://www.frauenrechte.de/tdf/pdf/EU-Studie_Ehrenmord.pdf.

¹⁵⁰ Strafbarkeit von Zwangsheiraten und arrangierten Heiraten: Bericht des Bundesrates in Erfüllung des Postulates 05.3477 der Staatspolitischen Kommission des Nationalrates vom 9.9.2005, 14.11.2007, p. 2.

¹⁵¹ Nazia Khanum, Forced marriage, family cohesion and community engagement: national learning through a case study of Luton, March 2008, Equality in Diversity, p. 4; <http://www.luton.gov.uk/Media%20Library/Pdf/Chief%20executives/Equalities/Forced%20Marriage%20Report%20-%20Final%20Version.pdf>

¹⁵² Christine Schirmacher, Mord im „Namen der Ehre“ zwischen Migration und Integration, 2007, p. 16.

unsuitable. Even if this happens only in a small minority of cases - compared to the total number of forced marriage - these cases are of the highest impact.

9.1 Dilemmas in conceptualising honour killing

These crimes are misleadingly called ‘honour killings’. From the perspective of the perpetrators such crimes may be intended to preserve the family honour. However, this language is in the danger of supporting unwillingly the perpetrators, because it might make them believe that they are truly acting in the name of honour. Yet, killing someone because he or she does not want to be forced into marriage cannot be in the name of honour. **It is an unacceptable and absolutely shameful thing to do.** It thus has been rightly suggested to speak of ‘shame killing’ instead. Although not a predominantly legal question the language used in the public - and legal - debate about such cases is closely related to the responsibility of media as well as state authorities. One of the predominant ways to stop such crimes is to convince the families in which such murders – and forced marriages – occur that they follow a wrong and devastating perception of honour and good behaviour.

The Luton findings support that **it is well possible to take appropriate steps** into this direction.¹⁵³ One should see that the families who force their girls into marriage may well be open to be convinced of the wrong nature of their traditional idea of honour. As the study suggests the father who forced his daughter into marriage did so against his own personal feelings. One should therefore also see that perpetrating relatives may themselves suffer from what they do. This can be a key to convince them and potential other perpetrators to abstain from such kind of actions.

9.2 Data on honour killings

In most European States there are no statistical data on honour killings available. Crime statistics do not specify this type of crime. However, in some Member States, efforts have been made to gather suitable statistical information on the subject. The results of these initiatives may give some indication of the extent of the problem in terms of numbers. These data, however, do not give sufficiently reliable grounds for an estimate to which Member State shows the highest number of honour killings. One may presume that the Member States with larger number of inhabitants and large numbers of relevant population also would show the largest numbers of such crimes.

According to a study of the UNFPA United Nations Population Fund 2000¹⁵⁴ about 5000 girls and women in at least 14 countries are killed each year in the name of honour. The real numbers, however, may be much higher, because only few cases come to the courts. Often, murder is disguised as an accident or a suicide. Victims are also forced to commit suicide.¹⁵⁵

Honour killings, although currently committed predominantly in Muslim countries, are not limited to those regions. Terre des Femmes reports about cases in the Hindu

¹⁵³ Nazia Khanum, Forced marriage, family cohesion and community engagement: national learning through a case study of Luton, March 2008, Equality in Diversity, p. 9; <http://www.luton.gov.uk/Media%20Library/Pdf/Chief%20executives/Equalities/Forced%20Marriage%20Report%20-%20Final%20Version.pdf>

¹⁵⁴ <http://www.unfpa.org/swp/2000/english/ch01.html>

¹⁵⁵ Ehrenmord, Myria Böhmecke (TERRE DES FEMMES); http://www.frauenrechte.de/tdf/pdf/EU-Studie_Ehrenmord.pdf; Jane Hailé, Honour Killing. Its Causes & Consequences: Suggested Strategies for the European Parliament, p. 11.

Sri Lanka and in the Christian Greece, it also reports cases from Albania, Bangladesh, China, India, Italy, Jordan, Congo, Kosovo, Morocco, Nigeria, Turkey, and Vietnam.

While sometimes the term honour killing is limited to a practice whereby male members kill a female relative who is perceived as having damaged family honour¹⁵⁶, in a broader definition by the German Bundeskriminalamt¹⁵⁷, **honour killings are killings that are committed out of a presumed obligation within one's own family in order to fulfil the requirements of the honour of the family.** Such honour killings are explained to be a phenomenon of traditional patriarchal societies and in this context predominantly in rural areas where the social standing of the family are of great import and the life of the man and his honour are valued higher than the life of a woman. The phenomenon does not only exist in Muslim coined countries, but also among Christians, for example in Lebanon or Syria, and in European countries. In Germany, honour killings today are known of in migrant families, predominantly in greater cities with a high proportion of Muslims.

In **Germany**, between 01.01.1996 and 18.07.2005 - on the basis of the information gathered by the police - 55 cases including 22 attempted killings have been interpreted as honour killings. There were 70 victims, since in some of the cases there was more than one victim. Of the 70 victims 48 were female and 22 were male. 36 women and 12 men were killed. In the years 1996 to 2005 there were a total of 25.687 crimes of killing (murder and manslaughter) in Germany including 16.909 attempts thereof.¹⁵⁸

The majority of the suspected delinquents and of the victims were adults. Out of a total of 70 suspects 55 were adults. In the German press it was often reported that families pick out the youngest brother in the family to commit the killing, because he would usually fall under special rules of criminal law for minors that provides for less severe punishments for minors. The survey does not support this assumption.

Honour killings are meant to restore the honour of the family and therefore occur typically within a family, i.e. perpetrator and victim are relatives. **Two out of three of the victims are female family members** (wife, sister, daughter, etc.). In some cases, however, only the one who is also seen guilty for the dishonouring (the lover or not accepted friend of the woman) is being killed. He usually is not a relative of the perpetrator. However, there always is a relation between those male victims and a female member of the family.

In all of the 55 cases a preceding violation of the honour was the motive for the killing. The causes for this violation of the honour differed. In the majority of the cases (30) the planned or factual separation from the partner was the cause for the violation of the honour. In 11 cases it was an extra marital relationship, in 4 cases western lifestyle and in 7 cases an unaccepted relationship. In the three remaining cases other incidents caused the violation of the family honour. **The findings of the study suggest that refusing a forced marriage is not a predominant cause for honour killings.**

Only few cases are known in which the conduct of male family members have been seen as violating the honour of the family and have been 'sanctioned'. **The male**

¹⁵⁶ Jane Hailé, Honour Killing. Its Causes & Consequences: Suggested Strategies for the European Parliament, p. ii.

¹⁵⁷ Presseinformation zu den Ergebnissen einer Bund-Länderabfrage zum Phänomenbereich "Ehrenmorde in Deutschland"; http://www.bka.de/pressemitteilungen/2006/060519_pi_ehrenmorde.pdf.

¹⁵⁸ Presseinformation zu den Ergebnissen einer Bund-Länderabfrage zum Phänomenbereich "Ehrenmorde in Deutschland"; http://www.bka.de/pressemitteilungen/2006/060519_pi_ehrenmorde.pdf

victims usually were persons who were held ‘co-responsible’ for the ‘dishonour’, thus friends of the girls or women. 36 of the 70 suspects were Turkish citizens, 6 came from former Yugoslavia, and 18 were German citizens. The study suggests that honour killings are a phenomenon within families of migrants and happen predominantly in large cities and metropolitan areas with a high percentage of Muslim population. These cases do explicitly not comprise those cases in which exclusively blood-revenge or jealousy were regarded as the motive. No indication was made of the possible number of unreported cases.¹⁵⁹ **‘Honour’ almost always relates to the conduct of women** rather than men. Female victims of honour killings tend to be murdered by their own families to purge their shame, either because they have refused the family’s choice or are insisting on an ‘unsuitable’ match. Male victims tend also to be murdered by the girl’s family, rather than their own, because they are seeking a relationship rejected by her parents. In some cases, the family may kill both parties.¹⁶⁰ **According to an Amnesty International report,**¹⁶¹ **examples for the alleged moral misconduct of the women** are said to be loss of virginity of the women; extramarital relations or relations not accepted by the parents; separation in fact or planned separation from the spouse, if relevant including taking the children with the victim; undermining of the role of the father as the guardian and supporter of the family, e.g. when the wife goes to work and earns money while the husband stays unemployed at home; the rejection of a husband chosen by the family (forced marriage); turning away from the traditions of the country of origin and turning to or being oriented at the western lifestyle.¹⁶² The US Department of State reports¹⁶³ on several such occurrences taking place in Germany.¹⁶⁴

As in other Member States of the European Union, also in **Belgium**, there are no overall statistics about honour crimes. A recent study of the Belgian federal police presented to the Belgian Senate, however, has registered 17 honour crimes within the last 5 years.¹⁶⁵

¹⁵⁹ Presseinformation zu den Ergebnissen einer Bund-Länderabfrage zum Phänomenbereich "Ehrenmorde in Deutschland"; http://www.bka.de/pressemitteilungen/2006/060519_pi_ehrenmorde.pdf

¹⁶⁰ Nazia Khanum, Forced marriage, family cohesion and community engagement: national learning through a case study of Luton, March 2008, Equality in Diversity, p. 15; <http://www.luton.gov.uk/Media%20Library/Pdf/Chief%20executives/Equalities/Forced%20Marriage%20Report%20-%20Final%20Version.pdf>

¹⁶¹ Amnesty international, http://www.bka.de/pressemitteilungen/2006/060519_pi_ehrenmorde.pdf

¹⁶² Twenty-three year old Hatan Sürücü¹⁶² was born in Germany and forced into marriage (or entered into arranged marriage¹⁶²) with a cousin in Turkey at the age of 16. She obtained a divorce against the will of her parents, returned to Germany with her little son where she separated herself from her family and lived an autonomous, self-determined life. Her brothers did not accept her ‘western lifestyle’ and she was killed in the name of honour by her youngest brother. He was found guilty of murder during the first trial and sentenced to nine years and three months in prison, three months less than the highest possible punishment for juveniles. The two elder brothers had also been charged, but were acquitted for lack of evidence. On August 28, 2007, the Federal Court of Justice in Leipzig ordered a retrial for the two acquitted brothers.

¹⁶³ Germany Human Rights Country Report US Department of State 2007; <http://www.state.gov/g/drl/rls/hrrpt/2007/100561.htm>

¹⁶⁴ In May 2007 a 42-year-old man of Turkish origin was sentenced to four and a half years in prison in Wuppertal for attempted manslaughter. According to witnesses, the man lifted his 16-year-old daughter over the railing of a four-story balcony while another family member pried loose her grip on the railing. The daughter had been forced to marry and later rebelled. The family accused her of being ‘dishonourable’ because she opposed her father's will. The victim survived. In April 2007, a Turkish immigrant was convicted of incitement and sentenced to five and a half years in prison by the Hessian state court in Limburg. The man had ordered his 16-year-old son to kill his sister because she did not want to marry her cousin. The son refused and told his teacher.

¹⁶⁵ <http://www.stophonourkillings.com/?name=News&file=article&sid=2435>

Likewise, for **Austria**, there are no statistical data. A case of honour killing in 2004 is reported when a 17 year old Lebanese killed his 20 year old sister in Tirol, because she had 'brought shame over the family'.¹⁶⁶

The **Swedish** National Criminal Police estimates that 2-3 girls are murdered every year in Sweden due to honour reasons. A lot more are victims of violence, oppression, and threats. The Swedish county boards estimated in 2004 that 1,500 to 2,000 girls and young women were subject to 'honour violence', and 10-15 per cent of these needed 'sheltered living'. Due to other sources, nearly all girls living in a 'culture of honour' are victims.¹⁶⁷ Swedish police were investigating in early 2008 whether a 16-year-old girl who died after falling from a fourth-floor balcony was the victim of an honour killing. Her stepfather and brother have reportedly been charged with her murder.¹⁶⁸ For **Serbia** it is reported¹⁶⁹ that honour killings are relatively rare. They are said to be mostly performed in traditionally patriarchal communities, or social strata not yet fully integrated into society, such as Roma people or refugees. However, since these groups are reportedly very hermetical and marginal it is hard to get accurate information. Reports also come from **Switzerland** about cases related with Member States of the European Union.¹⁷⁰ These reports show links of honour killings with forced marriages.¹⁷¹

9.3 The case of Turkey

In Turkey, according to the 2007 Human Rights Country Report US Department of State, violence against women, including honour killings and rape, continued to be a widespread problem.¹⁷² The USSD 2007¹⁷³ report says that KA-MER, a leading women's organization in the southeast, reported that from 2003-2007 a total of 198 women from eastern and south-eastern Anatolia contacted KA-MER to report that their family had threatened them with honour killings. Of these cases, three of the women died from injuries sustained in the attacks, one committed suicide, and 27 were pressured to commit suicide. The father or husband decided the fate of the woman in the vast majority of the cases. The report observed that 76 of these

¹⁶⁶ <http://www.profrau.at/de/ehrenmorde/oesterreich.htm>

¹⁶⁷ Partiarkalt våld som hot mot mänsklig säkerhet -- en kartläggning av åtgärder mot partiarkalt våld och förtryck, särskilt i hederns namn, mot kvinnor och homo- och bisexuella samt transpersoner, rapport från Regeringskansliet, Stockholm 2005, Eng: Patriarcate violence as a threat against human security -- a mapping of measures against patriarcate violence and oppression, especially in the name of honour, against women, homosexuals, bisexual, and transsexuals, report from the Government Office, Stockholm 2005; also see www.kvinnoforum.se/PDF/HRV2005.pdf

¹⁶⁸ <http://www.stophonourkillings.com/?name=News&file=article&sid=2390>.

¹⁶⁹ Information from Vojislav Stanimirovic; cf. also Marija Draskic, Family Law and the Rights of Children, Belgrade, 2007; Djodrije Ignjatovic, "Honour Killings", Legal Life, No. 9, Tome I, Belgrade, 2007; Vojislav Stanimirovic, Marriage and Marriage Payments through History, Belgrade, 2006.

¹⁷⁰ Strafbarkeit von Zwangsheiraten und arrangierten Heiraten: Bericht des Bundesrates in Erfüllung des Postulates 05.3477 der Staatspolitischen Kommission des Nationalrates vom 9.9.2005, 14.11.2007, p. 6.

¹⁷¹ The Turkish born and German raised Zahine D. had fled with her boy friend to Switzerland. Both were killed near Bern, Switzerland, on order of the family council on 18 May 2001. In May 2006 two Turkish nationals were extradited from Switzerland, because they had threatened their daughter, respectively spouse who had rebelled against her allegedly forced marriage with honour killing. On 29 November 2006, a 26 year old Pakistani national was convicted in Belinzona, Switzerland, with 18 years imprisonment for murdering his wife who had taken legal steps to divorce her four months old forced marriage.

¹⁷² Turkey Human Rights Country Report US Department of State 2007; <http://www.state.gov/g/drl/rls/hrrpt/2007/100589.htm>; also cf. UN reports E/CN.4/2002/74/Add.1 and A/HRC/4/34/Add.2

¹⁷³ <http://www.state.gov/g/drl/rls/hrrpt/2007/100589.htm>.

'decision makers' were illiterate, while 47 had no education beyond junior high school. Increased education levels correlated with a drop in the rate of such crimes. 'Disobedience' was determined to be the most common reason given to justify honour killings. Disobedience was variously defined as refusing to marry the person the family had chosen, refusing to have sex with a brother-in-law or father, not agreeing to prostitute oneself, not fulfilling the demands of husbands, fathers, brothers, or other elders, and interrupting man-to-man conversations.

Government officials worked with advocacy groups such as KA-MER to hold town hall meetings and set up rescue teams and hot lines for endangered women and girls. Under the law, honour killings require punishment of life imprisonment. Women's rights groups reported that there remained dozens of such killings every year, mainly in conservative Kurdish families in the southeast or among migrants from the southeast living in large cities. Because of sentence reductions for juvenile offenders, observers noted that young male relatives often were designated to perform the killing.¹⁷⁴

The European Commission Turkey 2007 Progress Report¹⁷⁵ has highlighted this again: 'Domestic violence against women continues to be widespread. Honour killings, early and forced marriages continue to occur. Moreover, access to reliable

¹⁷⁴ On June 4, 2007, an Istanbul court sentenced Omer Rençber to life imprisonment for stabbing and killing his sister Arzu Kaya. Rençber had been pressed by his family to kill 28-year-old Kaya when, after a time of family economic turmoil, she left her husband in Erzurum and fled to Istanbul with an alleged lover. Rençber told the court he did not regret his actions.

On June 22, 2007, a Diyarbakir Heavy Penal Court convicted numerous family members for the March 2006 murder of 23-year-old Gulistan Gumus. Gumus's husband from an arranged marriage, Omer Tas, conspired with relatives from his family and Gumus's family to murder her after she tried to divorce him and move to Istanbul. The court sentenced Tas and brother-in-law Mehmet Sah Tas to aggravated life imprisonment; father Bahattin Gumus and father-in-law Hamdullah Tas to 18 years for complicity in the murder; and two other relatives and one family friend to 15 years for complicity. The court added on three years to the sentences of Mehmet Sah, Hamdullah Tas, Izzettin Tas, Bahattin Gumus and Abdurrahim Gumus for breaking and entering.

On November 13, 2007, an Istanbul court ordered the first life sentence for an honor killing case, in the case of the murder of 22-year-old Guldunya Toren by her two brothers, Irfan and Ferit Toren. The court sentenced Irfan to life and Ferit (a minor at the time of the murder) to 23 years for killing their sister after Guldunya refused to become the second wife of a cousin who had raped her. Following the birth of the child that resulted from the rape, Guldunya fled her home in Bitlis and took refuge at an Istanbul police station. The police sent her back to live with her uncle, where her brothers then beat her. As she recovered from her wounds in a state hospital, the brothers shot her twice in the head.

In October 2006 the press reported that 15-year-old Naile Erdas from the southeastern city of Van was killed by her family when she gave birth to a child conceived during a rape. The girl, who hid her pregnancy, reportedly begged doctors at a state hospital where she gave birth not to return her to her family, fearing that she would be killed in accordance with the local tradition demanding her family's honor be cleansed. Doctors informed state authorities, but the prosecutor nevertheless handed the young woman over to her family. At year's end, Erdas's brother, father, and uncles were under arrest for the murder.

On April 25, 2007, a Diyarbakir penal court sentenced the three brothers-in-law of Rojda Gezginci to 15 months' imprisonment for cutting off the fifteen-year old Gezginci's nose in 2005, after she attempted to leave the family's household where she had been forced to marry her husband, Abahattin Gezginci, in a religious ceremony. Prosecutors initially charged the entire family upon Gezginci's complaint, but later dropped charges against the husband, father-in-law, and mother-in-law after Gezginci, under duress, withdrew the complaint.

At year's end, there was no action to alter the March 2006 conviction of a 14-year-old who murdered his mother in 2005, allegedly for disgracing the family when she discussed being beaten by her husband on a television show. The court sentenced him to 10 years in prison and acquitted the father and stepson of involvement in the crime. In November 2006 the chief prosecutor urged the court of appeals penal department to annul the decision acquitting the husband and father-in-law. The motion remained pending at year's end.

Children as young as 12 were at times married in unofficial religious ceremonies. Families in rare instances engaged in 'cradle arrangements', agreeing that their newborn children would marry at a later date, well before reaching the legal age.

¹⁷⁵ Published 6 November 2007.

data on the incidence of violence against women and of honour killings continues to be a problem.’

The Turkish government has published new data on honour killings.¹⁷⁶ State Minister Nimet Çubukçu's reply to a question by Republican People's Party (CHP) Aydın deputy Özlem Çerçioğlu revealed that the number of "honour killings" in Turkey is higher than estimated. In the past five years, 1,806 women died from murders committed by their families who believe their daughters have somehow disrespected the family honour. Another 5,375 committed suicide in the same time frame. These numbers show that one woman dies from an honour killing each day, reported Turkish daily Hürriyet. State Minister for Women and Family Affairs Nimet Çubukçu, said that she based the numbers on information provided by the Ministry of Justice and Ministry of the Interior, as the issue did not fall under the jurisdiction of her ministry. She explained the numbers as follows: ‘It has been disclosed that 1,806 murders, that fell under the definition of honour killings were committed between 2001 and 2006. During the same period, 5,375 women, including foreign nationals, have committed suicide’. An Amnesty International report of 2005¹⁷⁷ says that honour killings remain wide spread in Turkey despite recent criminal law reforms in Turkey and despite the increased public awareness; a report of 2007 states that many honour killings occur in Istanbul, in the year 2006, 25 cases have been documented.¹⁷⁸

10. THE ROLE OF CITIZENSHIP INTEGRATION AND ASYLUM AT TIMES OF RESPONDING TO FORCED MARRIAGES AND HONOUR KILLINGS

10.1 Forced marriages and citizenship

10.1.1 Cross country comparison

Many Member States: **Germany, the Slovak Republic, the Czech Republic, Poland, Hungary, Lithuania, the Netherlands, Finland, Sweden, Estonia, Latvia, Malta, and Italy do not allow any revocation of citizenship because of crimes committed.** In some of these countries, the exception concerns fraudulent applications for naturalisation and forcible attempts to change the constitutional order. In a number of these countries, it is the constitution itself that prohibits deprivation of citizenship.

In other Member States provisions exist that provide for the loss of citizenship because of crimes committed or other circumstances.¹⁷⁹

Thus, in **Ireland**¹⁸⁰, the Minister for Justice, Equality and Law Reform can revoke the certificate of naturalization if the naturalized person has, through an overt act, failed in his or her duty of fidelity to the nation and loyalty to the State.

¹⁷⁶ TDN, 29.01.2007; USSD Report Turkey 2006; <http://www.state.gov/g/drl/rls/hrrpt/2006/78844.htm>.

¹⁷⁷ Amnesty international Turkey: Women confronting family violence (AI Index EUR; 44/013/2004, June 2004) Ai-Positionspapier der Deutschen Sektion zu Verbrechen im Namen der Ehre („Ehrenmorden“), 2005, ai Länder-Kurzinfo der Sektionsgruppe Türkei vom 31.07.2005.

¹⁷⁸ Amnesty international; ai-Journal vom März 2007: reports of Turkish newspaper reports according to which many honour killings happened in Istanbul in the year 2006.

¹⁷⁹ Cf. Eva Ersbøll, Prevention of statelessness; http://www.europarl.europa.eu/hearings/20070626/libe/elsboll_en.pdf; cf. Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch, The Acquisition and Loss of Nationality; Rainer Bauböck, Bernhard Perchinig and Wiebke Sievers (eds.), Citizenship Policies in the new Europe.

¹⁸⁰ http://www.citizensinformation.ie/categories/moving-country/irish-citizenship/becoming_an_irish_citizen through _naturalisation

In **Bulgaria**¹⁸¹, a person guilty of a grave crime against the Republic of Bulgaria, harming the security and the interests of this country, may be divested of Bulgarian citizenship. Divestment of Bulgarian citizenship may be decreed only in respect to persons who are abroad.¹⁸² A person divested of Bulgarian citizenship may be deprived of his property or part of it for the benefit of the State. Distraints and prohibitions and other security measures may be imposed to guarantee the confiscation of property. The State is liable for the debts of a person divested of Bulgarian citizenship to third parties accrued prior to the issue of the State Council Decree within the to the amount of the confiscated property.

Romanian¹⁸³ citizenship can be withdrawn from a person who while abroad commits extremely serious acts harmful to the interests of the Romanian state or to Romania's prestige. Romanian citizenship cannot be withdrawn from a person who acquired it by birth. In **Austria**¹⁸⁴, a national in the services of a foreign country shall be deprived of nationality if the national through his behaviour severely damages the interests or the reputation of the Republic. **Belgian**¹⁸⁵ nationality can be withdrawn if a person has acquired Belgian citizenship through one of the provisions for those with non-Belgian parents and the person is 'in serious breach' of his or her obligations as a Belgian citizen.¹⁸⁶

In **Luxembourg**¹⁸⁷, according to Article 9 of the Luxembourg constitution, the status of Luxembourger shall be acquired, retained, and lost in accordance with the rules determined by civil law. The Constitution and the other laws relating to political rights determine what conditions in addition to this status are necessary for the exercise of these rights. Involuntary loss of Luxembourger citizenship¹⁸⁸ is possible in case of grave crime against the State of Luxembourg. This applies only to naturalized citizens.

In the **United Kingdom**¹⁸⁹ State authorities may withdraw British citizenship if, in their opinion, it would be in the public interest to do so and the person would not be made stateless as a result withdrawal of British citizenship. Chapter 55 of the nationality instructions¹⁹⁰ explains deprivation and nullity of citizenship: Under s.40 of the British Nationality Act 1981, as amended by the Nationality, Immigration and Asylum Act 2002 from 1 April 2003 and by the Immigration, Asylum and Nationality Act 2006 from 16 June 2006, any British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas), British protected person or

¹⁸¹ Act promulgated in State Gazette, No. 79 of 11 October 1968,
<http://www.legislationline.org/legislation.php?tid=11&lid=2830&less=false>.

¹⁸² Chapter Six- Divestment of Bulgarian Citizenship [Amended: "State Gazette" issue No. 38 of 1989].

¹⁸³ http://www.coe.int/t/e/legal_affairs/legal_cooperation/foreigners_and_citizens/nationality/documents/bulletin/Romania%20E%202004.pdf

¹⁸⁴ Article 33 Federal law concerning the Austrian nationality (Nationality Act 1985), Federal Law Gazette of the Republic of Austria, FLG No. 311/1985, amended by FLG No. 386/1986, FLG No. 685/1988, FLG No.521 /1993, FLG No. 505/1994, FLG I No. 109/1997, FLG I No. 30/1998, FLG I No. 123/1998 and FLG I No. 124/1998;
<http://www.legislationline.org/legislation.php?tid=11&lid=3400&less=false>.

¹⁸⁵ http://en.wikipedia.org/wiki/Belgian_nationality_law#Loss_of_Belgian_citizenship;
<http://www.diplomatie.be/en/services/nationality/detail.asp?TEXTID=42527>

¹⁸⁶ Art. 23 Circulaire du 25 avril 2000 concernant la loi du 1^{er} mars 2000 modifiant certaines dispositions relatives à la nationalité belge; <http://www.legislationline.org/legislation.php?tid=11&lid=3167&less=false>.

¹⁸⁷ Constitution of Luxembourg; <http://www.legislationline.org/?tid=11&jid=33&less=false>

¹⁸⁸ http://www.multiplecitizenship.com/wscl/ws_LUXEMBOURG.html.

¹⁸⁹ <http://www.bia.homeoffice.gov.uk/britishcitizenship/withdrawingcitizenship/>; cf. Chapter 55 of the nationality instructions.

¹⁹⁰ <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/nationalityinstructions/nichapter55/>.

British subject may, by order, be deprived of his or her citizenship or status if the Home Secretary is satisfied that it would be conducive to the public good to deprive the person of his or her British nationality, and that s/he would not become stateless as a result of the deprivation (ss.40(2) and (4)). Ministers suggested during the passage of the 2006 Act that deprivation under s. 40(2) of the 1981 Act may be appropriate where the person has encouraged or assisted others to commit acts of terrorism; has committed war crimes, public order offences or other serious crime; or has carried out acts seriously prejudicial to vital national interests, including espionage and acts of terrorism directed at the United Kingdom or an allied power. ‘Otherwise in the public interest’ is intended to cover issues of equivalent significance to those mentioned in s.40A(2)(a) (national security) and s.40A(2)(b) (international relations) but not of precisely the same nature. Examples given to Parliament during the debates on this provision were ‘information from non-State sources proving relevant to the decision to deprive’ and ‘sensitive information relating to industrial espionage’.¹⁹¹

Involuntary loss of **Cypriot** citizenship¹⁹² is possible when a naturalized Cypriot person commits acts of disloyalty to the government of Cyprus. In **Greece**¹⁹³, a Greek citizen may be declared forfeited of the Greek citizenship if while residing in another country he or she acted for the benefit of this country and against the interest of Greece. Loss of **Spanish** nationality¹⁹⁴ is possible for persons who are not Spanish by means of origins when final judgment convicted them to lose it, according to what is established in criminal laws. In **France**¹⁹⁵ involuntary loss of citizenship is possible if the person serves in a foreign military or civil service and has not complied with French orders to leave such service.

A **Slovenian**¹⁹⁶ citizen actually residing in a foreign country who possesses another nationality may be deprived of Slovenian citizenship based on ‘activities ... harmful to the international and other interests of the Republic of Slovenia’ according to Article 26 of the Citizen of the Republic of Slovenia Act.¹⁹⁷ These other interests are inter alia generally if the person is a persistent perpetrator of criminal offences prosecuted ex officio and of offences against public order or if the person despite the appeal of the competent authority refuses to carry out the duty of the citizen of the Republic of Slovenia prescribed by the Constitution and the Law.

In **Denmark**¹⁹⁸, according to the Consolidation Act No. 422 of 7 June 2004, 8B Act on Danish Nationality¹⁹⁹, a person convicted of violation of one or more provisions of Parts 12 and 13 of the Criminal Code may be deprived of his or her Danish nationality

¹⁹¹ Lords Committee Stage, 8.7.02 at col. 539.

¹⁹² <http://eucitizenship.blogspot.com/2005/12/cypriot-citizenship.html>.

¹⁹³ Citizenship Law of Greece, Acquisition of Greek citizenship; <http://www.legislationline.org/legislation.php?lid=1795&tid=11>

¹⁹⁴ <http://www.spain-visas.com/Spanish-Citizenship-and-Spanish-Nationality-pag7.htm>; cf. also http://www.migramedia.it/mie_cartelle/documenti/informato_migrato/5_SPA.pdf.

¹⁹⁵ <http://eucitizenship.blogspot.com/2005/12/french-citizenship.html>.

¹⁹⁶ http://en.wikipedia.org/wiki/Slovenian_nationality_law#Loss_of_Slovenian_citizenship; cf. http://www.multiplecitizenship.com/wscl/ws_SLOVENIA.html; http://www.coe.int/t/e/legal_affairs/legal_cooperation/foreigners_and_citizens/nationality/documents/bulletin/Slovenia%20E%202004.pdf

¹⁹⁷ Citizenship of the Republic of Slovenia Act, officially revised text (ZDRS-UPB1); www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/EN/enDUNZ/ZDRS-Eng.doc

¹⁹⁸ <http://www.legislationline.org/?jid=15&less=false&tid=11>; law at: <http://www.legislationline.org/upload/legislations/bf/94/ab5c01672aaa59a2aa6edecf7e67.pdf>.

¹⁹⁹ Danish Nationality Act, Consolidated Act No. 113 of 20 February 2003, amended by Act No. 311 of 5 May 2004.

by court order unless this will make the person concerned stateless. Where a person is punished abroad for an act which thus may lead to deprivation of Danish nationality, such person can be deprived of his or her nationality pursuant to section 11 of the Criminal Code. Parts 12 and 13 of the Danish Criminal Code refer to crimes against the State. A person may be deprived of the **Portuguese** citizenship or subjected to restrictions of his or her civil capacity in the cases and under the conditions laid down by the law, and never on political grounds, as is stated in article 26 of the Portuguese Constitution. Legal grounds for involuntary loss of Portuguese citizenship are seen when, upon reaching age 21, dual citizens do not formally express their desire to maintain their Portuguese citizenship.²⁰⁰

10.1.2 The Role of the European Convention on Nationality

It is important to note the restrictions provided for in **Article 7 of the European Convention on Nationality** regarding the loss of nationality. The Convention establishes for the relevant context that a State Party may provide in its internal law for the loss of its nationality ex lege or at the initiative of the State Party in the case of conduct seriously prejudicial to the vital interests of the State Party. It is more than doubtful whether crimes directed against the rights of individuals could be regarded as being seriously prejudicial to the vital interests of the State Party in the sense of the Convention. The Explanatory Report relating to the Convention declares in its No. 67: ‘The wording “conduct seriously prejudicial to the vital interests of the State Party” is drawn from Article 8, paragraph 3.a.ii of the 1961 Convention on the Reduction of Statelessness. Such conduct notably includes treason and other activities directed against the vital interests of the State concerned (for example work for a foreign secret service) but would not include criminal offences of a general nature, however serious they might be.’²⁰¹ Thus, **deprivation of citizenship because of honour killings or forced marriage crimes would contradict the European Convention on Nationality.**

10.2 The role of integration at times of responding to forced marriage and honour killing

More effective integration policies can help to combat forced marriages and honour killings. Short term, medium term, and long term measures are needed to improve the situation. Integration needs time. There can be setbacks as well as quick progress. Integration can be very quick especially in individual cases, but integration can over all also be a process of several generations. Victims of forced marriage and those threatened with honour crimes need help fast. An insightful collection of proposed measures has been provided by Nazia Khanum in the Luton study.²⁰² These suggestions are framed on a UK background. However, they seem to be well applicable to all Member States. These suggestions include steps far beyond legal measures and contribute to practical help. These practical steps should be based in

²⁰⁰ <http://eucitizenship.blogspot.com/2005/12/portuguese-citizenship.html>;
http://www.migramedia.it/mie_cartelle/documenti/informato_migrazione/5_POR.pdf.

²⁰¹ <http://conventions.coe.int/Treaty/en/Reports/Html/166.htm>.

²⁰² Nazia Khanum, Forced marriage, family cohesion and community engagement: national learning through a case study of Luton, March 2008, Equality in Diversity, p. 33;
<http://www.luton.gov.uk/Media%20Library/Pdf/Chief%20executives/Equalities/Forced%20Marriage%20Report%20-%20Final%20Version.pdf>

legal provisions to provide them with continuity. This includes legal structures as well as financial means provided for by law.

Short term measures include counselling and shelter: Victims need to be able to talk matters through with someone who understands their cultural background, and who also knows the legal and practical remedies available to them. Victims will often need counsellors from within their own community. Counsellors should be properly trained and be aware of issues such as confidentiality and the dangers of approaching third parties without the express request of the victim or the agreement of one of the professional agencies. Furthermore, short term measures refer to economic support. Social law should provide for financial support of victims so that they can make a living independent from their spouses. Victims and potential victims need to be provided with prompt and efficient support to access work opportunities and secure jobs. The need for culturally competent refuges for women from minority communities with appropriately skilled staff from the key client groups is obvious.

Moreover, the residence and citizenship status of spouses brought into the country must be cleared. Anomalous situations, where children are citizens of the Member State, but their mothers do not have the right to live or work in the country, must be avoided. The authorities should recognise that permanent residence and citizenship are among the legal and human rights to which the victims of forced marriage may have been denied, and should take a sympathetic view of their situation. Authorities may support victims and potential victims of forced marriage by exercising their discretion on the issue of entry permits and passports to block opportunities for forced marriage. This might lead to refuse to issue the passport.

Medium term measures of integration include especially language abilities and citizenship: Victims, who have deliberately been kept secluded by their in-laws, may not speak the language of the host country at all. Without proper language abilities, they cannot exercise their rights and obligations effectively, engage with education or health professionals over the welfare of their children, or earn their own living. Appropriate effort should be made to enable these women to learn the language. They should be offered citizenship classes, so to make people brought up outside the country aware of their rights and duties. E. g., in Germany, the law provides for courses to improve language ability as well as the knowledge of the Germany law, culture and history.²⁰³

Long term integration policies refer to providing appropriate housing facilities, urban planning law to counteract ghetto-like living conditions, and education programmes for immigrants.

Most of the forced marriage related programmes that have been put in place or that are demanded are designed to help the victims of forced marriage. These are well necessary and should be intensified. However, another approach is all too often ignored: What is also needed is to get into contact with those who exercise this force. The perpetrators must be convinced that what they do is wrong. **The attitude of potential perpetrators must be changed.** There is strong evidence that it is to large an extent the brothers who apply the violence. Very often, these young men are at pains to find a suitable role in their environment. One major task is to give them a convincing perspective for life and identity.

²⁰³ §§ 43 – 44a Aufenthaltsgesetz Germany, <http://www.aufenthaltstitel.de/aufenthaltsg.html#oben>.

10.3 The role of asylum at times of responding to forced marriage and honour killing

Granting subsidiary protection or political asylum to those who are vulnerable in their home countries to repression by their families because of their refusal to enter into a forced marriage – and cannot find alternative shelter – can be an important step towards stopping forced marriages by sending a clear signal that this is to be considered as a persecution act. Although recent rulings in some Member States²⁰⁴ have included such persecution within the definition given by article 1A of the 1951 Geneva Convention by arguing that women under the threat of forced marriage constitute a specific social group, the Geneva Convention does not explicitly refer to gender-based persecution as a qualifying ground for refugee status. Furthermore, in order to be consistent with this approach, Member States need to ensure that within their territory, women are guaranteed protection from such persecution.

11. CONCLUSION AND RECOMMENDATIONS

Forced marriage and honour killings remain a problem in the European Union. While many Member States have introduced promising measures to directly tackle the issues, further action can and should be taken. It remains important to intensify and structure the procedure of establishing the intending spouses' free will to marry. Implementing freedom of marriage as part of the *ordre public* in international private law remains a factual challenge. As a number of Member States have done, introducing and intensifying language and citizenship courses for immigrants can help to avoid forced marriage and honour killing and - above all - to empower potential victims to resist. Also, it is important to enable victims of forced marriage or attempted honour killings by means of law including alien law and social law to make an independent and self-determined living. It is necessary to also focus on brothers, fathers and other family members of the victims to implement longer term measures against forced marriage and honour killings. Beyond structuring the legal setting, the implementation of the law requires the support of civil society in combating forced marriage and honour killing. Relevant communities - religious and civil society – should be involved more strongly.

The following recommendations should be taken into account at times of adopting legislative initiatives covering this subject:

- Special attention is needed for the victims. They need appropriate help to make their own and self-determined life free from threat.
- Combating forced marriage requires a holistic policy approach covering a broad variety of legal, educational and social activities.
- Initiatives to help the victims should overlap with other actions, such as those relating to domestic violence, protection of children and other vulnerable groups, etc.
- It is imperative that cultural and religious sensitivities are built into the support services along with the linguistic ones.

²⁰⁴ For the application of such a reasoning in France, see Commission des recours des réfugiés, 4/3/2005, n. 489014; CRR, 11/4/2005, n. 507766; for the UK, see United Kingdom Asylum and Immigration Tribunal, TB (PSG, women) Iran, 9/3/2005, n. 00065; A. Phillips and M. Dustin, “UK initiatives on forced marriage: regulation, dialogue and exit”, *Political Studies*, 52, 2004, p. 541; C. Ruscazio, “Matrimoni forcati tran religione e diritto”, *Quaderni di diritto e politica ecclesiastica*, 1, 2007, pp. 221-256.

- Article 63.3 TEC requires the Council to adopt measures on the "conditions of entry and residence (..)" of third country nationals. In addition, the Treaty of Lisbon, if adopted, in Article 79.4 TFEU provides an explicit legal basis for the promotion of integration of legally resident immigrants. Therefore the European Parliament together with the Council, acting in accordance to the legislative procedure, could provide concrete incentives and support for the action of Member States with a view to promoting the integration of TCNs.
- Integration efforts including voluntary language and citizenship courses are a means to combat honour killing and forced marriage. The European Parliament should support that in the progressive establishment of the EU Framework on Integration the voice of civil society and vulnerable groups' organizations is duly heard and taken into consideration when adopting common normative responses. The setting up of a European Integration Forum constitutes a unique opportunity in this respect.
- In special cases alternative, accompanying steps are needed: improved schooling and education for the brothers; employment for the family; intensified courses for social aid personnel with language and culture skills.
- Deprivation of citizenship because of honour killings or forced marriage crimes would contradict the European Convention on Nationality.
- From an immigration-related perspective, expelling those who take to such crimes would not solve the problem, but would shift it to the home countries where it would be even more difficult to combat the causes and effects of the problem.

ANNEX

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**2. STATUS OF RATIFICATION OF THE CONVENTION ON THE ELIMINATION OF ALL
FORMS OF DISCRIMINATION AGAINST WOMEN²⁰⁵**

Member State	Signed	Deposited	Method
Austria	July 17, 1980	March 31, 1982	Ratification
Belgium	July 17, 1980	July 10, 1985	Ratification
Bulgaria	July 17, 1980	February 8, 1982	Ratification
Cyprus		July 23, 1985	Accession
Czech Republic		February 22, 1993	Succession from Czechoslovakia Ratification
Denmark	July 17, 1980	April 21, 1983	Ratification
Estonia		October 21, 1991	Accession
Finland	July 17, 1980	September 4, 1986	Ratification
France	July 17, 1980	December 14, 1983	Ratification
Germany	July 17, 1980 Signed June 25, 1980	July 10, 1985 as West Germany as East Germany Ratified July 9, 1980	Ratification
Greece	March 2, 1982	June 7, 1983	Ratification
Hungary	June 6, 1980	December 22, 1980	Ratification
Ireland		December 23, 1985	Accession
Italy	July 17, 1980	June 10, 1985	Ratification
Latvia		April 14, 1992	Accession
Lithuania		January 18, 1994	Accession
Luxembourg	July 17, 1980	February 2, 1989	Ratification
Malta		March 8, 1991	Accession
Netherlands	July 17, 1980	July 23, 1991	Ratification
Poland	May 29, 1980	July 30, 1980	Ratification
Portugal	April 24, 1980	July 30, 1980	Ratification
Romania	September 4, 1980	January 7, 1982	Ratification
Slovakia		May 28, 1993	Succession from Czechoslovakia Ratification
Slovenia		July 6, 1992	Succession from Yugoslavia
Spain	July 17, 1980	January 5, 1984	Ratification
Sweden	March 7, 1980	July 2, 1980	Ratification
United Kingdom	July 22, 1981	April 7, 1986	Ratification

²⁰⁵ adopted in 1979 by the UN General Assembly

3. TABLES ON CROSS-STATE COMPARISON²⁰⁶

The following tables aim at providing a cross-state comparison of the applicable legal frameworks relevant to forced marriages and honour killings. The Member States covered are those referred to throughout the paper and namely, in alphabetical order: Austria, Cyprus, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Malta, Slovenia, Spain, Sweden and the UK.

The relevant legal issues identified in the report may be divided under the following three distinctive headings that each correspond, in this annex, to a separate table: **First, criminal law sanctions** applicable to the act of forcing someone into marriage, be they specific to this crime or, alternatively the sanctions under which the perpetrator may be prosecuted; **Second, civil law provisions on marriage** in particular the legal conditions for the validity of a marriage and the grounds for annulment; and **Third, the immigration rules for the family reunification of spouses** in the case of marriages with a third country national, and the consequences of marriages of convenience on the legal status of a reunified spouse.

The corresponding national provisions have been inserted in each table. The main language used is English when a translation into this language was publicly available. In all the other cases, the original version of the national law has been included and an English translation of the main points has been provided in a footnote. Efforts have been made to refer to the law as last amended and to insert the link to the source of information. In those cases where the relevant legislation could not be found, the article was replaced by the available information. The different sources are listed at the end of this annex.

²⁰⁶ These tables were carried out by Anaïs Faure Atger and Massimo Merlino, both research assistants at the Justice and Home Affairs Unit of the Centre for European Policy Studies.

MEMBER STATE	1. CRIMINAL LAW SANCTIONS		
	Name of relevant legislation	Forced marriages	Alternative/aggravating sanctions: physical coercion/rape
AUSTRIA	Strafgesetzbuch (as last modified in November 2004) ²⁰⁷	<p>§ 106 Schwere Nötigung (1) Wer eine Nötigung begeht, indem er (...) 3. die genötigte Person zur Eheschließung, zur Prostitution oder zur Mitwirkung an einer pornographischen Darbietung (§ 215 Abs. 3) oder sonst zu einer Handlung, Duldung oder Unterlassung veranlasst, die besonders wichtige Interessen der genötigten oder einer dritten Person verletzt, ist mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen. (2) Hat die Tat den Selbstmord oder einen Selbstmordversuch der genötigten oder einer anderen Person, gegen die sich die Gewalt oder gefährliche Drohung richtet, zur Folge, so ist der Täter mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen.²⁰⁸</p>	
CYPRUS	Cyprus criminal code Cap 154 ²⁰⁹	<p>§150. Anyone who by duress causes any person to marry against his or her will is guilty of a misdemeanour.</p>	<p>§ 144 Any person who has unlawful carnal knowledge of a female, without her consent, or with her consent, if the consent is obtained by force or fear of bodily harm, or, in the case of a married woman, by personating her husband, is guilty of the felony termed rape.</p> <p>§ 145 Any person who commits the offence of rape is liable to imprisonment for life. Any person who attempts to commit rape is guilty of felony, and is liable to imprisonment for ten years.</p>

²⁰⁷ http://www.sbg.ac.at/ssk/docs/stgb/stgb99_110.htm

²⁰⁸ §106 Duress (1) Whoever exercises duress by (...) 3. forcing someone into marriage, prostitution or participation in a pornographic presentation or to any other action which goes against the interest of the person coerced or a third party, is liable to imprisonment for a period of 6 months to 5 years. (2) Should this act trigger the suicide of the coerced person or another, the sentence is imprisonment for one to 10 years.

²⁰⁹ <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/CsaCyprus.pdf>

DENMARK	Danish Penal Code (Straffeloven) ²¹⁰	No specific legislation	§ 216 (1) Any person who enforces sexual intercourse by violence or under threat of violence, shall be guilty of rape and liable to imprisonment for any term not exceeding eight years. The placing of a person in such a position that that person is unable to resist the act shall be equivalent to violence. (2) If the rape has been of a particularly dangerous nature, or in particularly aggravating circumstances, the penalty may be increased to imprisonment for any term not exceeding twelve years ²¹¹ .
ESTONIA	Penal Code ²¹² Passed 6 June 2001 (RT I 2001, 61, 364; consolidated text RT I 2002, 86, 504)	No specific legislation	Division 7: Offences Against Sexual Self-determination (Arts. § 141 to § 147)
FRANCE	Criminal Code ²¹³ (Consolidated Version of 6 August 2008)	No specific legislation	Art. 222-23 Any act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise, is rape. Rape is punished by fifteen years' criminal imprisonment.
GERMANY	Strafgesetzbuch ²¹⁴ "Strafgesetzbuch in der Fassung der Bekanntmachung	§ 240 Nötigung (1) Wer einen Menschen rechtswidrig mit Gewalt oder durch Drohung mit einem empfindlichen Übel zu einer Handlung, Duldung oder Unterlassung nötigt, wird mit Freiheitsstrafe bis zu drei Jahren	

²¹⁰ <https://www.retsinformation.dk/Forms/R0710.aspx?id=2135>

²¹¹ <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/CsaDenmark.pdf>

²¹² <http://www.legislationline.org/upload/legislations/a8/34/d020d95fadb7ad9c52f595ad9c1c.htm>

²¹³ <http://www.legislationline.org/upload/legislations/fc/44/e4c081a2fe81d7963b6e937113b6.htm>
http://www.legifrance.gouv.fr/affichCode.do;jsessionid=A0098BB972947B581545BE778863BEA1.tpdjo09v_2?idSectionTA=LEGISCTA000006181753&cidTexte=LEGITEXT000006070719&dateTexte=20081030

²¹⁴ <http://bundesrecht.juris.de/stgb/index.html>

²¹⁵ § 240 (1) Anyone who forces someone unlawfully to undertake an action by using violence or threat shall be punished with imprisonment up to three years or with fine. (2) The act is illegal when the use of threat or violence purports to facilitate an objectionable aim. (3) The intent is punishable. (4) In particular grave cases, the sentence is imprisonment from six months to up to five years. These refer to cases where a person 1. forces another to have sexual intercourse or to marry 2. forces another to carry out an abortion 3. misuses his position of authority.

	vom 13. November 1998 (BGBl. I S. 3322)	oder mit Geldstrafe bestraft. (2) Rechtswidrig ist die Tat, wenn die Anwendung der Gewalt oder die Androhung des Übels zu dem angestrebten Zweck als verwerflich anzusehen ist. (3) Der Versuch ist strafbar. (4) In besonders schweren Fällen ist die Strafe Freiheitsstrafe von sechs Monaten bis zu fünf Jahren. Ein besonders schwerer Fall liegt in der Regel vor, wenn der Täter 1. eine andere Person zu einer sexuellen Handlung oder zur Eingehung der Ehe nötigt. 2. eine Schwangere zum Schwangerschaftsabbruch nötigt oder 3. seine Befugnisse oder seine Stellung als Amtsträger mißbraucht. ²¹⁵	
GREECE	Greek Penal Code (Poinikos kodikas)	No specific legislation	Art. 336-1 on rape
HUNGARY	Act IV of 1978 on the Criminal Code ²¹⁶	No specific legislation	Chapter XII. Title III Crimes Against Freedom and Human Dignity Art. 174 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. Chapter XIV. Title II Crimes Against Sexual Morals Art. 197. (1) A person who by violent action or direct menace against life or limb forces a woman to have sexual intercourse, or uses the incapacity of the woman for defense or for the manifestation of her will for sexual intercourse, commits a felony and shall be punishable with imprisonment between two to eight years. (2) The punishment shall be imprisonment from five years to ten years, if <i>a</i>) the victim is under twelve years of age, <i>b</i>) the victim is under the education, supervision, care or medical treatment of the perpetrator,

²¹⁶ <http://www.legislationline.org/upload/legislations/15/ef/84d98ff3242b74e606dcb1da83aa.pdf>

			c) more than one person have sexual intercourse with the victim on the same occasion, knowing about each other's acts.
ITALY	Penal Code (Codice Penale) ²¹⁷	No specific legislation	<p>Art. 609 bis. Violenza sessuale. Chiunque con violenza o minaccia o mediante abuso di autorità, costringe taluno a compiere o subire atti sessuali è punito con la reclusione da cinque a dieci anni. Alla stessa pena soggiace chi induce taluno a compiere o subire atti sessuali:</p> <ol style="list-style-type: none"> 1) abusando delle condizioni di inferiorità fisica o psichica della persona offesa al momento del fatto; 2) traendo in inganno la persona offesa per essersi il colpevole sostituito ad altra persona. Nei casi di minore gravità la pena è diminuita in misura non eccedente i due terzi.²¹⁸ <p>Art. 609 ter. Circostanze aggravanti; La pena è della reclusione da sei a dodici anni se i fatti di cui all'articolo 609 bis sono commessi:</p> <ol style="list-style-type: none"> 1) nei confronti di persona che non ha compiuto gli anni quattordici; 2) con l'uso di armi o di sostanze alcoliche narcotiche o stupefacenti o di altri strumenti o sostanze gravemente lesivi della salute della persona offesa; 3) da persona travisata o che simuli la qualità di pubblico ufficiale o di incaricato di pubblico servizio; 4) su persona comunque sottoposta a limitazioni della libertà personale; 5) nei confronti di persona che non ha compiuto gli anni sedici della quale il colpevole sia l'ascendente, il genitore anche adottivo, il tutore. <p>La pena è della reclusione da sette a quattordici anni se il fatto è commesso nei confronti di persona che non ha compiuto gli anni dieci.²¹⁹</p>

²¹⁷ <http://www.altalex.com/index.php?idnot=36653>

²¹⁸ Art. 609 bis. Anyone who, by means of violence, threat or abuse of authority, forces another to perform or undergo a sexual act is liable to imprisonment for five to 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.

²¹⁹ Art. 609 ter The term of imprisonment is between 6 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 7 and 14 years if the victim is under 10 years of age

			Art. 610. Chiunque, con violenza o minaccia, costringe altri a fare, tollerare od omettere qualche cosa e' punito con la reclusione fino a quattro anni. La pena e' aumentata se concorrono le condizioni prevedute dall'articolo 339. ²²⁰
LATVIA	Criminal Law ²²¹	No specific legislation	<p>Section 159. Rape</p> <p>(1) For a person who commits an act of sexual intercourse by means of violence, threats or taking advantage of the state of helplessness of a female victim (rape), the applicable sentence is deprivation of liberty for a term not exceeding seven years, with or without police supervision for a term not exceeding three years.</p> <p>(2) For a person who commits rape where commission is by a person who has previously committed rape or commission is by a group of persons, or who commits rape of a female minor, the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding fifteen years, with or without police supervision for a term not exceeding three years.</p> <p>For a person who commits rape, if serious consequences are caused thereby, or commits rape of a female juvenile, the applicable sentence is life imprisonment, or deprivation of liberty for a term of not less than ten years and not exceeding twenty years, with or without police supervision for a term not exceeding three years.</p>
MALTA	Criminal Code ²²²	<p>Chapter 9; Title VII; Sub-title II of crimes against the peace and honour of families, and against morals.</p> <p>§ 199. (1) Whosoever shall, by violence, abduct any person, with intent to abuse or marry such person, shall, on conviction, be liable, in the first case, to imprisonment for a term from eighteen months to three years, with or without solitary confinement, and, in the second case, to imprisonment for a term</p>	<p>Chapter 9; Title VII; Sub-title II of crimes against the peace and honour of families, and against morals.</p> <p>§ 198. Whosoever shall, by violence, have carnal knowledge of a person of either sex, shall, on conviction, be liable to imprisonment for a term from three to nine years, with or without solitary confinement.</p> <p>§ 201. Unlawful carnal knowledge and any other indecent assault, shall be presumed to be accompanied with violence - (a) when it is committed on any person under twelve years of age; (b) when the</p>

²²⁰ Art. 610 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.

²²¹ <http://www.ttc.lv/New/lv/tulkojumi/E0032.doc>

²²² http://docs.justice.gov.mt/lom/legislation/english/leg/vol_1/chapt9.pdf

		<p>from nine to eighteen months.</p> <p>§ 200. (1) If the offender under the last preceding article shall within twenty-four hours voluntarily release the person abducted without having abused such person, and shall restore such person to the family, or to his or her place of custody, or shall convey such person to any other place of safety, the punishment shall be imprisonment for a term from one to three months.</p> <p>(2) In such case, if the offender, after abducting a person, shall marry such person, he shall not be liable to prosecution, except on the complaint of the party whose consent, according to the civil laws, would be required for the marriage; and if the marriage takes place after the conviction, the penal consequences thereof shall</p> <p>cease and the party convicted shall, upon his application, be forthwith released by order of the court.</p>	<p>person abused was unable to offer resistance owing to physical or mental infirmity, or for any other cause independent of the act of the offender, or in consequence of any fraudulent device used by the offender.</p> <p>§ 202. The punishment prescribed for any of the crimes referred to in the preceding articles of this sub-title, shall be increased by one degree in each of the following cases:</p> <p><u>(h) when the crime is committed on the person of:</u></p> <p><u>(i) the spouse;</u> Provided that in this paragraph "spouse" includes the person whose marriage with the offender has been dissolved or declared null;</p>
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SLOVENIA	Penal Code ²²³ <i>as of 28 September 2004</i>	No specific legislation	Art. 387 (1) Whoever, in violation of international law, brings another person into slavery or a similar condition, or keeps another person in such a condition, or buys, sells or delivers another person to a third party, or brokers the buying, selling or delivery of another person, or urges another person to sell his freedom or the freedom of the person he supports or looks after, shall be sentenced to imprisonment for not less than one and not more than ten years. (2) Whoever transports persons held in the condition of slavery or in-similar condition from one country to another, shall be sentenced to imprisonment for not less than six months and not more than five years. (3) Whoever commits the offence under in the first and the second paragraphs of the present article against a minor shall be sentenced to imprisonment for not more than three years.
SPAIN	Penal Code (Código Penal) ²²⁴	No specific legislation	Art. 178. El que atentare contra la libertad sexual de otra persona, con violencia o intimidación, será castigado como responsable de agresión sexual con la pena de prisión de uno a cuatro años. ²²⁵ Art. 179. Cuando la agresión sexual consista en acceso carnal por vía vaginal, anal o bucal, o introducción de objetos por alguna de las dos primeras vías, el responsable será castigado, como reo de violación, con la pena de prisión de seis a doce años. ²²⁶
SWEDEN	Swedish Penal Code ²²⁷ (Ds 1999:36)	No specific legislation	Chapter 6. § 1. A person who by violence or threat which involves, or appears to the threatened person to involve an imminent danger, forces another person to have sexual intercourse or to engage in a comparable sexual act, that having regard to the nature of the violation and the

²²³ <http://www.oecd.org/dataoecd/50/18/34287694.pdf>

²²⁴ http://noticias.juridicas.com/base_datos/Penal/lo10-1995.12t8.html#cl

²²⁵ Art.178 A person who acts against the sexual freedom of another person, through the use of violence or threat, commits the offence of “sexual aggression”. This is punishable by imprisonment for 1 to 4 years.

²²⁶ Art. 179 When the “sexual aggression” consists of any act of sexual penetration (whether vaginal, anal or by mouth), the aggressor will be sentenced to imprisonment for a term of 6 to 12 years.

²²⁷ <http://wings.buffalo.edu/law/bclc/sweden.pdf>

			<p>circumstances in general, is comparable to enforced sexual intercourse, shall be sentenced for rape to imprisonment for at least two and at most six years. Causing helplessness or a similar state of incapacitation shall be regarded as equivalent to violence. If having regard to the nature of the violence or the threat and the circumstances in general, the crime is considered less serious, a sentence to imprisonment for at most four years shall be imposed.</p> <p>If the crime is gross, a sentence to imprisonment for at least four and at most ten years shall be imposed for gross rape. In assessing whether the crime is gross, special consideration shall be given to whether the violence involved a danger to life or whether the perpetrator caused serious injury or serious illness or, having regard to the method used or the victim's youth or other circumstances, exhibited particular ruthlessness or brutality.</p> <p>§ 2. A person who, under circumstances other than those defined in Section 1, makes someone engage in a sexual act by unlawful coercion shall be sentenced for sexual coercion to imprisonment for at most two years. If the person who committed the act exhibited particular ruthlessness or if the crime is otherwise considered gross, a sentence of at least six months and at most four years shall be imposed for gross sexual coercion.</p> <p>Chapter 4.</p> <p>§ 4a. A person who commits criminal acts as defined in Chapters 3, 4 or 6 against another person having, or have had, a close relationship to the perpetrator shall, if the acts form a part of an element in a repeated violation of that person's integrity and suited to severely damage that person's self-confidence, be sentenced for gross violation of integrity to imprisonment for at least six months and at most six years.</p> <p>If the acts described in the first paragraph were committed by a man against a woman to whom he is, or has been, married or with whom he is, or has been cohabiting under circumstances comparable to marriage, he shall be sentenced for gross violation of a woman's integrity to the same punishment.</p>
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UK	<p>(A) Criminal Justice & Public Order Act 1994²²⁸</p> <p>(B) Protection from Harassment Act 1997²²⁹</p> <p>(C) Sexual Offences Act 2003²³⁰</p> <p>(D) Forced Marriage Act 2007²³¹</p>	No specific legislation	<p>(A) Art. 142 Rape of women and men</p> <p>For section 1 of the [1956 c. 69.] Sexual Offences Act 1956 (rape of a woman) there shall be substituted the following section—</p> <p>“1 Rape of woman or man</p> <p>(1) It is an offence for a man to rape a woman or another man.</p> <p>(2) A man commits rape if—</p> <p style="padding-left: 20px;">(a) he has sexual intercourse with a person (whether vaginal or anal) who at the time of the intercourse does not consent to it; and</p> <p style="padding-left: 20px;">(b) at the time he knows that the person does not consent to the intercourse or is reckless as to whether that person consents to it.</p> <p>(3) A man also commits rape if he induces a married woman to have sexual intercourse with him by impersonating her husband.</p> <p>(4) Subsection (2) applies for the purpose of any enactment.”</p>
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MEMBER STATE	2. CIVIL LAW PROVISIONS ON MARRIAGE		
	Relevant Law	Conditions (age/consent)	Grounds for annulment

²²⁸ http://www.opsi.gov.uk/acts/acts1994/ukpga_19940033_en_1

²²⁹ http://www.opsi.gov.uk/acts/acts1997/ukpga_19970040_en_1

²³⁰ http://www.opsi.gov.uk/acts/acts2003/ukpga_20030042_en_1.htm

²³¹ http://www.opsi.gov.uk/Acts/acts2007/PDF/ukpga_20070020_en.pdf

AUSTRIA	Ehegesetz ²³²	<p>A. Ehefähigkeit Ehemündigkeit § 1 (1) Ein Mann wird mit dem vollendeten neunzehnten, eine Frau mit dem vollendeten sechzehnten Lebensjahr ehemündig. (2) Einen Mann, der das achtzehnte, und eine Frau, die das fünfzehnte Lebensjahr vollendet haben, hat das Gericht auf ihren Antrag für eine bestimmte Ehe als ehemündig zu erklären, wenn sie für diese Ehe reif erscheinen.²³³</p> <p>Form der Eheschließung § 17 (1) Die Ehe wird dadurch geschlossen, daß die Verlobten vor dem Standesbeamten persönlich und bei gleichzeitiger Anwesenheit erklären, die Ehe miteinander eingehen zu wollen. (2) Die Erklärungen können nicht unter einer Bedingung oder einer Zeitbestimmung abgegeben werden.²³⁴</p>	<p>I. Nichtigkeitsgründe</p> <p>Mangel der Form § 21 (1) Eine Ehe ist nichtig, wenn die Eheschließung nicht in der durch § 17 vorgeschriebenen Form stattgefunden hat. (2) Die Ehe ist jedoch als von Anfang an gültig anzusehen, wenn die Ehegatten nach der Eheschließung fünf Jahre oder, falls einer von ihnen vorher verstorben ist, bis zu dessen Tode, jedoch mindestens drei Jahre, als Ehegatten miteinander gelebt haben, es sei denn, daß bei Ablauf der fünf Jahre oder zur Zeit des Todes des einen Ehegatten die Nichtigkeitsklage erhoben ist.²³⁵</p>
CYPRUS	Marriage Act (104(I)) 2003 ²³⁶	<p>Art. 14²³⁷ Art. 15²³⁸</p>	Art. 13 ²³⁹
DENMARK	The Formation and Dissolution of	<p>§ 1. A person who is under 18 years of age may not contract marriage without the permission of the</p>	<p>§ 24. (1) A marriage may also be annulled by a judicial decree based on a claim made by either spouse:</p>

²³² http://stadt.heim.at/wien/141968/pub/gesetze_oe/Eheg.htm

²³³ §1 (1) A man is marriageable after attainment of his 19th year, a woman after her 16th year. (2) At the age of 18 and 15 respectively, derogations may be obtained if they appear mature enough for such union.

²³⁴ §17 (1) The marriage will be concluded after they have both stood at the same time before the national authorities and have voiced their willingness to marry. (2) Their will cannot be expressed conditionally.

²³⁵ §21 (1) A marriage is void if it has been carried out in any other way than that described in article 17. (2) The marriage is however to be considered valid after five years or, after three year if one of the partner dies as it is considered that after this period, the grounds for annulment are waived.

²³⁶ http://www.ucm.org.cy/GR/Depository/Document/517/Document_517_File.pdf

²³⁷ Art. 14 The minimum age for marriage is 18 years. (...) Marriage must be contracted with the free and full consent of the spouses.

²³⁸ Art. 15 A person may be authorised, for serious reasons, to marry at the age of 16.

²³⁹ Art. 13 If the spouses have consented under duress (in breach of Art. 14) the marriage is void.

	Marriage Act ²⁴⁰	<p>County Governor's Office (<i>statsamtet</i>). When giving a young person under 18 permission to marry the County Governor's Office may lay down conditions to the effect that despite the marriage the young person is still a minor and consequently legally incompetent until he or she attains the age of 18.</p> <p>§ 2. (1) A person who is under 18 years of age and has not previously been married shall not marry without the consent of the parents.</p>	<p>1) if at the time of marrying he was in a state which made him unable to manage his own affairs; 2) if he was forced to contract marriage; 3) if by mistake he was married to a person other than his fiancée or without being willing to marry; or 4) if he was induced to contract marriage, being misled by the other spouse through false information or fraudulent non-disclosure of the truth about who the other person was or about such circumstances in the other person's previous life which would with reasonable cause have deterred him from marrying and which must still be considered to be of such significance to the relationship between the spouses that the marriage cannot reasonably be required to be maintained.</p>
ESTONIA	<p>Family Law Act Passed 12 October 1994 (RT¹ I 1994, 75, 1326), entered into force 1 January 1995 last amended by 23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124;²⁴¹</p>	<p>§ 2. Prerequisites for contraction of marriage (1) A marriage is contracted on the mutual desire of the prospective spouses. (2) A marriage shall not be contracted if a prospective spouse does not confirm his or her desire to marry or if a prospective spouse is not of the age to marry or if circumstances set out in § 4 of this Act become evident.</p> <p>§ 3. Age of marriage (1) A person who has attained eighteen years of age is of age to marry. (2) A minor between fifteen and eighteen years of age may marry with the written consent of his or her parents or guardian.</p> <p>§ 4. Hindrances to contraction of marriage A marriage shall not be contracted: 1) between persons of whom at least one is already married;</p>	<p>§ 33. Grounds for annulment (1) A court shall annul a marriage only if the provisions of §§ 3 and 4 of this Act have been violated upon contraction of the marriage, if an ostensible marriage was contracted or if consent for marriage was obtained against the will of a prospective spouse by fraud or duress. (2) A court shall, within ten days after the entry into force of a court order annulling a marriage, send a copy of the court order to the vital statistics office where the marriage was contracted.</p> <p>§ 34. Right of claim for annulment of marriage (1) Annulment of marriage may be requested by: 1) a spouse who is a minor, his or her parent or guardian if the marriage was contracted in violation of the provisions of § 3 of this Act; 2) a spouse if an ostensible marriage was contracted or if the marriage was contracted in violation of the provisions of § 4 of this Act; 3) a spouse whose agreement for marriage was acquired against his or her will by fraud or duress; 4) other persons whose rights are violated by violation of the provisions of § 4 of this Act.</p>

240 This is an Act to consolidate the Formation and Dissolution of Marriage Act, cf. Consolidated Act No. 148 of 8 March 1991 as amended by section 4 of Act No. 386 of 20 May 1992, by section 35 of Act No. 387 of 14 June 1995, by section 8 of Act No. 389 of 14 June 1995, by section 7 of Act No. 385 of 22 May 1996 and by section 9 of Act No. 232 of 2 April 1997. Available at: http://host.uniroma3.it/progetti/cedir/cedir/Lex-doc/Dk_marriag.pdf

²⁴¹ <http://www.legaltext.ce/text/en/X1017K7.htm>

		2) between direct ascendants and descendants, brothers and sisters, half-brothers and half-sisters, adoptive parents and adopted children, or between children adopted by the same person; 3) between persons of whom at least one has been placed under guardianship due to his or her restricted active legal capacity (except in the cases specified in subsections 3 (2)-(4) of this Act).	(2) The limitation period for a claim for annulment of a marriage contracted by fraud or duress is one year after the contraction of marriage.
FRANCE	Code Civil ²⁴²	Art. 144 L'homme et la femme ne peuvent contracter mariage avant dix-huit ans révolus. ²⁴³ Art. 145 Néanmoins, il est loisible au procureur de la République du lieu de célébration du mariage d'accorder des dispenses d'âge pour des motifs graves. ²⁴⁴ Art. 146 Il n'y a pas de mariage lorsqu'il n'y a point de consentement. ²⁴⁵	Art. 180 Le mariage qui a été contracté sans le consentement libre des deux époux, ou de l'un d'eux, ne peut être attaqué que par les époux, ou par celui des deux dont le consentement n'a pas été libre, ou par le ministère public. L'exercice d'une contrainte sur les époux ou l'un d'eux, y compris par crainte révérencielle envers un ascendant, constitue un cas de nullité du mariage. S'il y a eu erreur dans la personne, ou sur des qualités essentielles de la personne, l'autre époux peut demander la nullité du mariage. ²⁴⁶
GERMANY	Bürgerliches Gesetzbuch ²⁴⁷	§ 1303 Ehemündigkeit (1) Eine Ehe soll nicht vor Eintritt der Volljährigkeit eingegangen werden. (2) Das Familiengericht kann auf Antrag von dieser Vorschrift Befreiung erteilen, wenn der Antragsteller das 16. Lebensjahr vollendet hat und sein künftiger Ehegatte volljährig ist. (...) ²⁴⁸	§ 1314 Aufhebungsgründe (1) Eine Ehe kann aufgehoben werden, wenn sie entgegen den Vorschriften der §§ 1303, 1304, 1306, 1307, 1311 geschlossen worden ist. (2) Eine Ehe kann ferner aufgehoben werden, wenn 1. ein Ehegatte sich bei der Eheschließung im Zustand der Bewusstlosigkeit oder vorübergehender Störung der Geistestätigkeit befand;

²⁴² <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721&dateTexte=20081023>

²⁴³ A.144 A man and a woman cannot contract marriage before the age of 18.

²⁴⁴ A.145 However, the authorities celebrating the marriage may grant derogation in particularly grave cases.

²⁴⁵ A.146 There is no marriage without consent.

²⁴⁶ A.180 The marriage which was contracted without the free consent of both spouses, or of one of them, can only be contested by one of the spouses, or by the one whose consent was not given freely. The exercise of duress on one spouse or the other, including by fear of an ascendant, constitutes a case for nullity of the marriage. In the event of mistake on the person or on his/her essential characteristics, the other spouse may ask for annulment of the marriage.

²⁴⁷ <http://bundesrecht.juris.de/bgb/>

²⁴⁸ §1303 (1) A marriage cannot be concluded before the age of majority (2) A family court may waive this requirement provided the minor is at least 16 and the other partner has attained majority.

		<p>§ 1312 Trauung, Eintragung (1) Der Standesbeamte soll bei der Eheschließung die Eheschließenden einzeln befragen, ob sie die Ehe miteinander eingehen wollen, und, nachdem die Eheschließenden diese Frage bejaht haben, aussprechen, dass sie nunmehr kraft Gesetzes rechtmäßig verbundene Eheleute sind. (...) ²⁴⁹</p>	<p>2. ein Ehegatte bei der Eheschließung nicht gewusst hat, dass es sich um eine Eheschließung handelt; 3. ein Ehegatte zur Eingehung der Ehe durch arglistige Täuschung über solche Umstände bestimmt worden ist, die ihn bei Kenntnis der Sachlage und bei richtiger Würdigung des Wesens der Ehe von der Eingehung der Ehe abgehalten hätten; dies gilt nicht, wenn die Täuschung Vermögensverhältnisse betrifft oder von einem Dritten ohne Wissen des anderen Ehegatten verübt worden ist; 4. ein Ehegatte zur Eingehung der Ehe widerrechtlich durch Drohung bestimmt worden ist; (...) ²⁵⁰</p>
GREECE	Civil Code ²⁵¹	Art. 1350 ²⁵²	<p>Art. 1372 ²⁵³</p> <p>Art. 1375 ²⁵⁴</p>
HUNGARY	ACT IV OF 1952 ON MARRIAGE, FAMILY AND GUARDIANSHIP ²⁵⁵		<p>Art. 7-8</p> <p>Art. 10-12</p>
ITALY	Codice Civile Libro Primo: Delle	Art. 84 I minori di età non possono contrarre matrimonio. Il tribunale, su istanza dell'interessato, accertata la sua maturità psico-fisica e la fondatezza	Art. 117 Matrimonio contratto con violazione degli artt. 84, 86, 87 e 88 Il matrimonio contratto con violazione degli artt. 86, 87 e 88 può essere impugnato dai coniugi, dagli ascendenti prossimi, dal pubblico

²⁴⁹ §1312 (1) The civil servant should ask both parties to the marriage individually whether they want to conclude the marriage. After their consent is given, it should be spoken out that they are now married according to law.

²⁵⁰ §1314 (1) The grounds for annulment of a marriage refer to the violation of §§ 1303, 1304, 1306, 1307, 1311. (2) A marriage may also be annulled if one of the parties 1. was unconscious at the time of contracting it, suffered psychological disturbance, 2. did not know a marriage was taking place, 3. was tricked into marriage by moral fraud, 4. was forced into marriage through the use of duress.

²⁵¹ Κώδικες ; Επιμέλεια Παναγιώτη Παπαδουλάκη ; ΤΕΤΑΡΤΟ ΒΙΒΛΙΟ ΟΙΚΟΓΕΝΕΙΑΚΟ ΔΙΚΑΙΟ ΠΡΩΤΟ ΚΕΦΑΛΑΙΟ ; Available at: <http://gort.gr/oikog.htm>

²⁵² Art. 1350 The conditions for validity of a marriage are a minimum age of 18 years and marital consent.

²⁵³ Art. 1372 A marriage is void, when contracted in breach of the dispositions of Art. 1350.

²⁵⁴ Art. 1375 A marriage can be annulled when a person contracted it under duress or grave fear.

²⁵⁵ 1952. évi IV. törvény a házasságról, a családról és a gyámságról. <http://www.jogiforum.hu/torvenytar/116/Csjt/1952.-%C3%A9vi-IV.-t%C3%B6rv%C3%A9ny--a-h%C3%A1zass%C3%A1gr%C3%B3l,-a-csal%C3%A1dr%C3%B3l-%C3%A9s-a-gy%C3%A1ms%C3%A1gr%C3%B3l>

	<p>persone e della famiglia²⁵⁶</p> <p>Titolo VI: Del matrimonio</p>	<p>delle ragioni addotte, sentito il pubblico ministero, i genitori o il tutore, può con decreto emesso in camera di consiglio ammettere per gravi motivi al matrimonio chi abbia compiuto sedici anni.²⁵⁷</p> <p>Art. 86 Libertà di stato. Non può contrarre matrimonio chi è vincolato da un matrimonio precedente (65, 116, 117, 124, c.p. 556).²⁵⁸</p>	<p>ministero e da tutti coloro che abbiano per impugnarlo un interesse legittimo e attuale (125,127). Il matrimonio contratto con violazione dell'art. 84 può essere impugnato dai coniugi, da ciascuno dei genitori e dal pubblico ministero. La relativa azione di annullamento può essere proposta personalmente dal minore non oltre un anno dal raggiungimento della maggiore età. La domanda, proposta dal genitore o dal pubblico ministero, deve essere respinta ove, anche in pendenza del giudizio, il minore abbia raggiunto la maggiore età ovvero vi sia stato concepimento o procreazione e in ogni caso sia accertata la volontà del minore di mantenere in vita il vincolo matrimoniale. Il matrimonio contratto dal coniuge dell'assente non può essere impugnato finché dura l'assenza. Nei casi in cui si sarebbe potuta accordare l'autorizzazione ai sensi del quarto comma dell'art. 87, il matrimonio non può essere impugnato dopo un anno dalla celebrazione. La disposizione del primo comma del presente articolo si applica anche nel caso di nullità del matrimonio previsto dall'art. 68.²⁵⁹</p> <p>Art.122 Violenza ed errore. Il matrimonio può essere impugnato da quello dei coniugi il cui consenso è stato estorto con violenza o determinato da timore di eccezionale gravità derivante da cause esterne allo sposo.²⁶⁰</p> <p>Art. 123 Simulazione. Il matrimonio può essere impugnato da ciascuno dei coniugi quando gli sposi abbiano convenuto di non</p>
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²⁵⁶ <http://www.altalex.com/index.php?idnot=34808>

²⁵⁷ Art. 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 of the minor’s parents or guardians – permit the marriage of a person aged at least 16.

²⁵⁸ Art. 86 Persons who are already bound by a marriage may not contract another marriage.

²⁵⁹ Art. 117 In the case of marriages contracted in breach of Article 84, 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, 87 (kinship) and 88 (homicide). In these cases entitlement to take proceedings is extended to anyone with a legitimate and current interest to do so.

²⁶⁰ Art. 122 A person who has been married by force or grave fear due to circumstances which were not dependant upon him/her, may ask for the annulment of the marriage.

²⁶¹ Art. 123 Other grounds for annulment include simulation, previous marriage and death of the spouse.

			<p>adempiere agli obblighi e di non esercitare i diritti da esso discendenti. L'azione non può essere proposta decorso un anno dalla celebrazione del matrimonio ovvero nel caso in cui i contraenti abbiano convissuto come coniugi successivamente alla celebrazione medesima. Art. 124 Vincolo di precedente matrimonio Il coniuge può in qualunque tempo impugnare il matrimonio dell'altro coniuge; se si oppone la nullità del primo matrimonio, tale questione deve essere preventivamente giudicata (86, 117). Art. 125 Azione del pubblico ministero. L'azione di nullità non può essere promossa dal pubblico ministero dopo la morte di uno dei coniugi.²⁶¹</p>
LATVIA	The Civil Law, Latvijas Republikas Civillikums as of 2001 ²⁶²	<p>32. Marriage prior to the attaining of eighteen years of age is prohibited except in the case provided for in Section 33.</p> <p>33. By way of exception, a person who has attained sixteen years of age may marry with the consent of his or her parents or guardians if he or she marry a person of legal age. If the parents or guardians, without good cause, refuse to give permission, then permission may be given by an orphan's court for the place where the parents or appointed guardians reside.</p>	<p>71. A spouse may request a dissolution of the marriage if his or her life or health is endangered by the other spouse.</p> <p>72. When one of the spouses deserts the other, the latter may claim for dissolution of marriage if the absence continues for not less than one year.</p> <p>74. A spouse may request the dissolution of a marriage if the other spouse has committed a criminal offence, such as to tarnish reputation, or also lives so dishonourably or immorally that it may not be required that marital cohabitation should be continued with him or her.</p> <p>75. A marriage may be dissolved if marital life has so deteriorated that further cohabitation of the spouses and preservation of the family is not possible.</p> <p>76. The continuous, sustained living separate and apart by the spouses for three years is cause for the dissolution of a marriage.</p>
MALTA	(A) Marriage Act. ACT XXXVII of 1975, as amended by Acts:	<p>CHAPTER 255 Restrictions on marriage</p> <p>3. (1) A marriage contracted between persons either of whom is under the age of sixteen shall be void.</p>	<p>19. (1) In addition to the cases in which a marriage is void in accordance with any other provision of this Act, a marriage shall be void:</p> <p>(a) if the consent of either of the parties is extorted by violence,</p>

²⁶² <http://www.ttc.lv/lv/publikacijas/civillikums.pdf>

	<i>XXXIV of 1981, III of 1983, I and XXIV of 1995, IX of 2000, XXXI of 2002 and IX of 2004.</i> ²⁶³	<p>(2) Without prejudice to the provisions of sub-article (1), a person who is subject to paternal authority or to tutorship may not validly contract marriage without the consent of the person exercising such authority, or of the tutor, as the case may be.</p> <p>(3) Notwithstanding the provisions of sub-article (2) the court of voluntary jurisdiction within whose jurisdiction the minor habitually resides, may upon good cause being shown, authorise the celebration of a marriage referred to in that sub-article, where the consent of the person exercising paternal authority or of the tutor, as the case may be, is not forthcoming; and for the purposes of proceedings in connection with this sub-article, article 781(a) of the Code of Organisation and Civil Procedure shall not apply.</p>	<p>whether physical or moral, or fear;</p> <p>(b) if the consent of either of the parties is excluded by error on the identity of the other party;</p> <p>(c) if the consent of either of the parties is extorted by fraud about some quality of the other party which could of its nature seriously disrupt matrimonial life;</p> <p>(d) if the consent of either of the parties is vitiated by a serious defect of discretion of judgment on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage;</p> <p>(e) if either of the parties is impotent, whether such impotence is absolute or relative, but only if such impotence is antecedent to the marriage;</p> <p>(f) if the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal act;</p> <p>(g) if either of the parties subjects his or her consent to a condition referring to the future;</p> <p>(h) if either of the parties, although not interdicted or infirm of mind, did not have at the time of contracting marriage, even on account of a transient cause, sufficient powers of intellect or volition to elicit matrimonial consent.</p> <p>19A. (1) A valid marriage may be annulled at the request of one of the spouses on the grounds that the other party has refused to consummate the same.</p>
SLOVENIA	Marriage law (Zakon o zakonski zvezi in družinskih razmerjih)	Art. 13, 16, 17, 18, 23	Art. 39

²⁶³ <http://www.maltachurchtribunals.org/docs/chapt255.pdf>

<p>SPAIN</p>	<p>(A) Código Civil TÍTULO IV. DEL MATRIMONIO²⁶⁴</p> <p>(B) LEY 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio.²⁶⁵</p>	<p>(A) CAPÍTULO II. Conditions for marriage</p> <p>Art. 45 No hay matrimonio sin consentimiento matrimonial. La condición, término o modo del consentimiento se tendrá por no puesta.²⁶⁶</p> <p>Art. 46 No pueden contraer matrimonio: Los menores de edad no emancipados.²⁶⁷</p>	<p>CAPÍTULO VI.</p> <p>Art. 73 Es nulo cualquiera que sea la forma de su celebración: El matrimonio celebrado sin consentimiento matrimonial. El matrimonio celebrado entre las personas a que se refieren los artículos 46¹ y 47¹, salvo los casos de dispensa conforme al artículo 48. El que se contraiga sin la intervención del Juez, Alcalde o funcionario ante quien deba celebrarse, o sin la de los testigos. El celebrado por error en la identidad de la persona del otro contrayente o en aquellas cualidades personales que, por su entidad, hubieren sido determinantes de la prestación del consentimiento. El contraído por coacción o miedo grave.²⁶⁸</p>
<p>SWEDEN</p>	<p>Marriage Act of 1987, No 230. (amended by Government Bill 2003/04:48 which became law on 1 May 2004).</p>	<p><i>Marital capacity:</i></p> <ul style="list-style-type: none"> - minimum age of 18 - failure to meet the age requirement is an impediment - child marriages and forced marriages entered into in another country are not recognised. <p><i>Consent</i></p> <ul style="list-style-type: none"> - 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 parties²⁶⁹ 	<p>There are no rules governing marriage annulment in Swedish law. A marriage can be dissolved in two ways: if one of the spouses dies or if a court makes a decree for divorce.²⁷⁰</p>

²⁶⁴ http://noticias.juridicas.com/base_datos/Privado/cc.11t4.html

²⁶⁵ http://www.unex.es/unex/gobierno/direccion/vicedoc/archivos/ficheros/igualdad/legislacion/ley13_2005.pdf

²⁶⁶ Art. 45 There is no marriage without marital consent.

²⁶⁷ Art. 46 Non-emancipated minors cannot marry, although there is provision for exceptions (Article 48).

²⁶⁸ Art. 73 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.

²⁶⁹ The English version of this law currently being unavailable, the relevant information was found in [http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG\(2005\)1_E.pdf](http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG(2005)1_E.pdf)

UK	<p>(A) The Marriage Act 1949 as amended by subsequent legislations²⁷¹</p> <p>(B) The Matrimonial Causes Act 1973²⁷²</p>	<p>(A) Part 1.2 Marriages of persons under sixteen “A marriage solemnized between persons either of whom is under the age of sixteen shall be void.”</p>	<p>(B) Art. 12 Grounds on which a marriage is voidable A marriage celebrated after 31st July 1971 shall be voidable on the following grounds only, that is to say—</p> <p>(a)that the marriage has not been consummated owing to the incapacity of either party to consummate it;</p> <p>(b)that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;</p> <p>(c)that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;</p> <p>(d)that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of [the Mental Health Act 1983] of such a kind or to such an extent as to be unfitted for marriage;</p> <p>(e)that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;</p> <p>(f)that at the time of the marriage the respondent was pregnant by some person other than the petitioner.</p>
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MEMBER STATE	3. IMMIGRATION RULES		
	Relevant Law	Conditions for family reunification of spouses	Consequences of bad faith marriages on the status of third country national
AUSTRIA	Federal Act concerning settlement and residence in Austria	Art. 2 § 1 No. 9 Family member: A spouse or an unmarried under-age child, including adopted and step children (nuclear family), whereas the spouses, except spouses of Austrian nationals, EEA nationals and Swiss nationals must have reached 18 years of	Art. 27 (1) Family members with a settlement permit have the right of residence derived from the sponsor valid for up to five years. The right of continued abode shall remain, if the requirements for the family reunification cease to exist later than five years after granting of the initial settlement permit. The lost of the settlement permit of the

²⁷⁰ The English version of this law currently being unavailable, the relevant information was found in http://ec.europa.eu/civiljustice/divorce/divorce_swe_en.htm#7.

²⁷¹ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1949/cukpga_19490076_en_1

²⁷² http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1973/cukpga_19730018_en_1

	<p>(the Settlement and Residence Act – SRA) Federal Law Gazette No. 100/2005 in the version Federal Law Gazette No. 31/2006²⁷³</p>	<p>age; In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the federal territory, the issue of a residence title to a further spouse will not be authorized.</p> <p>For applicable rules refer to articles 8, 9, 26, 46, 47, 48, 69</p>	<p>sponsor in the first five years shall cause the lost of the settlement right of the family member <i>ex officio</i>.</p> <p>Art. 30 (1) Spouses who do not lead a join family life within the meaning of Art 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms may not invoke their marital status as ground for the granting or prolongation of residence titles.</p>
CYPRUS	<p>Aliens and Immigration Law, Cap. 105 (1959 edition, as amended in 2001)²⁷⁴</p>	<p>Section 2.(1) In this Law, unless the context otherwise requires - "native of the colony" means - (b) an alien spouse of a citizen of the Republic, not divorced by a Court order, and residing with the husband for a term not less than one year. Under special circumstances, it is at the Chief Immigration Officer's discretion to consider any alien spouse of a citizen of the Republic a person as a native of the Colony, even if that person has resided with her husband for a term of less than one year.</p> <p>Section 8. The following persons, if known to the Immigration Officer or if Certain their identity is established to his satisfaction, shall be permitted to persons to enter the Colony without any further formality:- enter freely. (a) any native of the Colony who does not come within any of the categories enumerated in paragraphs (g), (h), (i) or U) of subsection (1) of section 6;</p>	<p>Section 2.(1) In this Law, unless the context otherwise requires- "a marriage of convenience" means a marriage entered into by a citizen of the Republic or an alien residing permanently in the Republic of Cyprus and an alien exclusively aiming at the latter's entrance and residence in the Republic;</p> <p>Section 3. Evidence that tend to show that a marriage of convenience has taken place are mainly the following: (a) The couple does not reside under the same roof; (b) The spouses had never met before their wedding ceremony took place; (c) lack of proper contribution to the obligations stemming from the marriage; (d) Statements made by the spouses regarding their identifications (name, residence address, nationality and profession), the circumstances under which they first met or regarding other essential information of personal nature that are conflicting; (e) The spouses do not speak a language understood by both; (f) A pecuniary amount was given for the conclusion of the wedding (other than the money given as a dowry in cases of nationals of a country where providing dowry is the usual practice); (g) There are indications that either one or both spouses had in the past entered into a marriage of convenience or face problems regarding their residence permit in the Republic.</p> <p>Section 7A. (1) If the Chief Immigration Officer, based on evidence mentioned in section (3) of the present article or by any other way and</p>

²⁷³ <http://www.bmi.gv.at/downloadarea/niederlassung/rechtsgrundlagen/NAG-eng.pdf>

²⁷⁴ <http://www.unhcr.org/refworld/docid/3fbde7762.html>

			<p>after he consults with the Advisory Committee established by article 7B of the present Law, concludes that an alien has entered into a marriage of convenience, then - (a) Forbids the said alien to remain in the Republic; (b) Cancels or denies the renewal of the alien's residence permit and orders his deportation according to the sections of article 14.</p> <p>Section 7D. An alien or a citizen of the Republic who has performed a marriage of convenience or in any way has contributed to the performance of such marriage is guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand pounds or both such imprisonment and fine.</p>
DENMARK	<p>Aliens (Consolidation) Act No. 945 of 1 September 2006²⁷⁵</p>	<p>9. (1) Upon application, a residence permit may be issued to: - (i) an alien over the age of 24 who cohabits at a shared residence, either in marriage or in regular cohabitation of prolonged duration, with a person permanently resident in Denmark over the age of 24 who: - (a) is a Danish national; (b) is a national of one of the other Nordic countries; (c) is issued with a residence permit under section 7 or 8; or (d) has held a permanent residence permit for Denmark for more than the last 3 years.</p> <p>(2) It must be made a condition for a residence permit under subsection (1)(i) that the applicant and the person living in Denmark sign a declaration stating that, to the best of their ability, they will involve themselves actively in the Danish course and integration into the Danish society of the applicant and any accompanying foreign children.</p> <p>(3) It must be made a condition for a residence permit to a cohabitant under subsection (1)(i) that the person living in Denmark undertakes to maintain the applicant. Unless exceptional reasons make it</p>	<p>9. (8) Unless exceptional reasons conclusively make it appropriate, including regard for family unity, a residence permit under subsection (1)(i) cannot be issued if it must be considered doubtful that the marriage was contracted or the cohabitation was established at both parties' own desire. If the marriage has been contracted or the cohabitation established between close relatives or otherwise closely related parties, it must be considered doubtful, unless particular reasons make it inappropriate, including regard for family unity, that the marriage was contracted or the cohabitation was established at both parties' own desire.</p> <p>(9) A residence permit under subsection (1)(i) cannot be issued if there are definite reasons for assuming that the decisive purpose of contracting the marriage or establishing the cohabitation is to obtain a residence permit.</p>

²⁷⁵ http://www.nyidanmark.dk/resources.ashx/Resources/Lovstof/Love/UK/aliens_act_945_eng.pdf

		inappropriate, including regard for family unity, it must be made a condition for a residence permit under subsection (1)(i) that the person living in Denmark who shall maintain the applicant, or who has undertaken to maintain the applicant, proves his ability to do so, cf. subsection (22).	
ESTONIA	Aliens Act (RT I 2004, 58, 410 last amendments RT 2006, 26,191). ²⁷⁶	<p>§ 12 Issue of residence permit to settle with spouse</p> <p>(1) A temporary residence permit may be issued to an alien to settle with his or her spouse who resides in Estonia permanently and who is an Estonian citizen or to settle with his or her spouse who is an alien who has resided in Estonia for at least five years on the basis of a permanent residence permit if the spouses share close economic ties and a psychological relationship, if the family is stable and the marriage is not fictitious, and if the application for a residence permit is justified.</p> <p>3) The validity of a temporary residence permit issued to an alien who has been married for less than three years to a person who legally resides in Estonia shall not exceed one year, and the residence permit may be extended in each of the following three years for not longer than one year at a time. The validity of a residence permit issued to an alien who has been married for at least three years to a person who legally resides in Estonia shall not exceed three years, and the residence permit shall be extended for not longer than three years at a time.</p>	<p>§ 12 Issue of residence permit to settle with spouse</p> <p>(4) The issue of a residence permit to settle with a spouse who legally resides in Estonia shall be refused if the spouse who resides in Estonia or the alien who applies for the residence permit does not meet the conditions provided by law, if any other condition for the issue of a residence permit is not complied with, if the application for the residence permit is not justified or other circumstances exist which are the bases for refusal to issue a residence permit.</p>
FRANCE	Code de l'entrée et du séjour des étrangers Version consolidée au 11 septembre 2008 ²⁷⁷	Art. L. 411-1 Le ressortissant étranger qui séjourne régulièrement en France depuis au moins dix-huit mois, sous couvert d'un des titres d'une durée de validité d'au moins un an prévus par le présent code ou par des conventions internationales, peut	Art. L. 431-2 En cas de rupture de la vie commune ne résultant pas du décès de l'un des conjoints, le titre de séjour qui a été remis au conjoint d'un étranger peut, pendant les trois années suivant l'autorisation de séjourner en France au titre du regroupement familial, faire l'objet d'un retrait ou d'un refus de renouvellement.

²⁷⁶ <http://www.legaltext.ee/text/en/X1019K13.htm>

²⁷⁷ <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&dateTexte=20081023>

		<p>demander à bénéficier de son droit à être rejoint, au titre du regroupement familial, par son conjoint, si ce dernier est âgé d'au moins dix-huit ans, et les enfants du couple mineurs de dix-huit ans.²⁷⁸</p>	<p>Lorsque la rupture de la vie commune est antérieure à la demande de titre, l'autorité administrative refuse de l'accorder. Les dispositions du premier alinéa ne s'appliquent pas si un ou plusieurs enfants sont nés de cette union, lorsque l'étranger est titulaire de la carte de résident et qu'il établit contribuer effectivement, depuis la naissance, à l'entretien et à l'éducation du ou des enfants dans les conditions prévues à l'article 371-2 du code civil. En outre, lorsque la communauté de vie a été rompue en raison de violences conjugales qu'il a subies de la part de son conjoint, l'autorité administrative ne peut procéder au retrait du titre de séjour de l'étranger admis au séjour au titre du regroupement familial et peut en accorder le renouvellement. En cas de violence commise après l'arrivée en France du conjoint mais avant la première délivrance de la carte de séjour temporaire, le conjoint se voit délivrer, sauf si sa présence constitue une menace pour l'ordre public, une carte de séjour temporaire portant la mention "vie privée et familiale".²⁷⁹</p> <p>Art. L. 623-1. – Le fait de contracter un mariage (L. no 2006-911, 24 juill. 2006, art. 90) « ou de reconnaître un enfant aux seules fins d'obtenir, ou de faire obtenir, un titre de séjour ou le bénéfice d'une protection contre l'éloignement », ou aux seules fins d'acquérir, ou de faire acquérir, la nationalité française est puni de cinq ans d'emprisonnement et de 15 000 euros d'amende. Ces mêmes peines sont applicables en cas d'organisation ou de tentative d'organisation d'un mariage (L. no 2006-911, 24 juill. 2006, art. 90) « ou d'une reconnaissance d'enfant » aux mêmes fins. Elles sont portées à dix ans d'emprisonnement et à 750 000 euros d'amende lorsque l'infraction est commise en bande organisée.²⁸⁰</p>
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²⁷⁸ L. 411-1 The foreigner who has been residing legally in France for a period of at least 18 months may ask to be rejoined by her/his spouse aged at least 18 and by the couple's children provided they are aged less than 18.

²⁷⁹ L. 431-2 When the community of life is interrupted within three years of family reunification, the residence permit may be revoked. This does not apply when a child was born and the partner establishes that he/she has contributed since birth to the sustaining and education of the child. When the interruption of community of life is the result of domestic violence, the residence permit is not automatically withdrawn.

²⁸⁰ Art. L.623-1 The contracting of a marriage of convenience for the purpose of obtaining a residence permit is punishable by 5 years imprisonment and by a 15 000 euro fine. The same applies to the organizing of such a marriage.

GERMANY	<p>Residence Act of 30 July 2004 (Federal Law Gazette I, p. 1950), as last amended by the Act on Implementation of Residence- and Asylum-Related Directives of the European Union of 19 August 2007 (Federal Law Gazette I, p. 1970)²⁸¹</p>	<p>Section 30 Subsequent immigration of spouses (1) A foreigner's spouse shall be granted a residence permit if</p> <ol style="list-style-type: none"> 1. both spouses are at least 18 years of age, 2. the spouse is able to communicate in the German language on a basic level at least and 3. the foreigner <ol style="list-style-type: none"> a) possesses a settlement permit, b) possesses an EC long-term residence permit, c) possesses a residence permit pursuant to Section 20 or Section 25 (1) or (2), d) has held a residence permit for two years and the residence permit is not subject to a subsidiary provision pursuant to Section 8 (2) or the subsequent issuance of a settlement permit has not been ruled out by virtue of a rule of law, e) is in possession of a residence permit, if the marriage existed at the time of said permit being granted and the duration of the foreigner's stay in the Federal territory is expected to exceed one year or f) possesses a residence permit pursuant to Section 38a and the marriage already existed in the Member State of the European Union in which the foreigner has the status of a long-term resident. 	<p>Section 27 Principles pertaining to the subsequent immigration of dependents (1a) The subsequent immigration of dependents shall not be permitted</p> <ol style="list-style-type: none"> 1. if it is established that the marriage has been entered into or kinship established solely for the purpose of enabling the subsequently immigrating persons to enter and stay in the Federal territory or 2. if there are concrete indications that one of the spouses has been forced into marriage. <p>Section 31 Independent right of residence of spouses (2) The requirement stipulated in sub-section 1, sentence 1, no. 1 for marital cohabitation to have existed lawfully for two years in the Federal territory shall be waived if necessary to enable the spouse to continue his or her residence in order to avoid particular hardship, unless an extension of the foreigner's residence permit is excluded. Particular hardship shall be deemed to apply if the obligation to return to the country of origin resulting from the termination of marital cohabitation threatens to substantially erode the foreigner's legitimate interests, or if the continuation of marital cohabitation is unreasonable due to the erosion of the foreigner's legitimate interests; such legitimate interests shall also include the wellbeing of a child living with the spouse as part of a family unit. In order to avoid abuse, extension of the residence permit may be refused if the spouse is reliant on benefits in accordance with Book Two or Book Twelve of the Social Code for reasons for which he or she is responsible.</p>
GREECE	<p>(A) Presidential Decree 131/2006²⁸² (PD)</p> <p>(B) Rule 3386/2005²⁸³ No</p>	<p>(A) Art. 4 and Art. 5</p> <p>(B) Art. 53 Third country nationals, who legally live in Greece for at least two years, have the right to apply for the entry and residence of their family members in the Country, if the following conditions are fulfilled:</p>	<p>(A) Art. 9.1 g²⁸⁴</p> <p>(B) Art. 53. 3) Residence permits for family reunification purposes are not issued or renewed and are withdrawn, except for the cases mentioned in article 75 of the present law in the following cases:</p> <ol style="list-style-type: none"> a) The sponsor and his family members do not lead a real married or family life.

²⁸¹ http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Gesetze/Gesetze_Sprachen/AufenthG_en.templateId=raw.property=publicationFile.pdf/AufenthG_en.pdf

²⁸² <http://www.dsb.gr/documents/τ.δ%20131-2006.doc>

	<p>Entry, residence and social integration of third-country nationals in the Hellenic Territory.</p>	<p>a) Family ties are proven. b) Family members are going to live with them. c) They prove that they have stable and regular income, sufficient to cover the needs of their family, which is independent of the system of social assistance of the Country. (...)</p> <p>(B) Art. 54 1) Family members of third country nationals that enter the Country, within the framework of family reunification, are considered to be: a) Spouses, if they have completed the 18th year of their age (...)</p>	<p>b) It is found out that the family relation, in particular marriage, adoption or affiliation of minor children, has been established in order to circumvent the clauses of the present law for the provision of a residence permit. A family relation is considered to have been established for this reason if family members do not live together or they are not able to communicate or if one spouse ignores information regarding the personal status of the other spouse. c) The sponsor's residence terminates and the member of his family is not eligible to reside in the Country independently, according to article 60²⁸⁵ of the present law.</p> <p>(B) Art. 75 Special regulations. 1) A residence permit is neither issued nor renewed and withdrawn, if: a) The conditions of the present law are not or are no longer fulfilled. b) It is confirmed through a judgment or arises from an irrevocable order of the competent judicial council that untrue or misleading information, false or falsified documents have been used or that any fraud has been committed or any other illegal means have been used. c) The clause of article 1 par. 2 of l. 2503/1997 (GOVERNMENT GAZETTE 107 A') about the lodging of an appeal against actions of the Secretary General of the Region, according to the respective application of article 8 of l. 3200/1955 (GOVERNMENT GAZETTE 97 A'), does not apply for the decisions of the Secretary General of the Region, issued subject to the present law.</p>
<p>HUNGARY</p>	<p>Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals²⁸⁶</p>	<p>Special Regulations Relating to Stays for a Period of Longer Than Three Months § 19. (1) A residence permit may be issued on the grounds of family reunification to a third-country national who is relative of a third-country national who is in possession of a residence permit,</p>	<p>Provisions Governing the Right of Residence for a Period of Longer than Three Months. § 18. (1) Unless otherwise prescribed in this Act, new residence permits or the extension of existing ones shall be refused, or if already issued shall be withdrawn from third-country nationals: d) who established the family relationship solely for the purpose of</p>

²⁸³ http://www.imepo.gr/documents/Nomos3386_en.pdf

²⁸⁴ (A) Art. 9.1.g, provides for rejection of the application, withdrawal or non-renewal of a residence permit in case it is established that the family ties, especially marriage, adoption or recognition of children, took place for the sole purpose of circumventing the provisions of the PD in order to gain access and residence to the Greek territory.

²⁸⁵ Article 60: Independent residence permits for family members.

²⁸⁶ http://www.mfa.gov.hu/NR/rdonlyres/9AB129A0-083C-4781-9307-1C953EF12C1A/0/071219actII2007_valid_after21Dec2007.pdf

		<p>immigration permit, permanent residence permit, interim permanent residence permit, a national or EC permanent residence permit, or - under specific other legislation - in possession of a residence card or permanent residence card (for the purposes of this Section hereinafter referred to as "sponsor").</p> <p>National Permanent Residence Permit</p> <p>§ 35. (1) National permanent residence permits may be issued - with the exception set out in Subsection (4) - to third-country nationals holding a residence permit or an interim permanent residence permit for establishing residence in the territory of the Republic of Hungary, if: a) having lawfully resided in the territory of the Republic of Hungary continuously for at least the preceding three years before the application was submitted; b) a family member of dependent direct relatives in the ascending line - other than the spouse - of a third-country national with immigrant or permanent resident status or who has been granted asylum, and living in the same household for at least the preceding one year before the application was submitted; c) the spouse of a third-country national with immigrant or permanent resident status or who has been granted asylum, provided that the marriage was contracted at least two years before the application was submitted;</p>	<p>obtaining a residence permit on the grounds of family reunification.</p> <p>§ 37. (2) The immigration authority shall withdraw the permit if: a) the third-country national in question has disclosed false information or untrue facts to the competent authority in the interest of obtaining the permit;</p>
ITALY	<p>(A) Legge 6 marzo 1998, n. 40.²⁸⁷</p> <p>TITOLO IV</p> <p>Diritto all'unita' familiare e tutela dei</p>	<p>(A) Art. 26 Diritto all'unita' familiare</p> <p>1. Il diritto a mantenere o a riacquistare l'unita' familiare nei confronti dei familiari stranieri e' riconosciuto, alle condizioni previste dalla presente legge, agli stranieri titolari di carta di soggiorno o di permesso di soggiorno di durata non inferiore a un</p>	<p>(B) Art. 30, 1-bis.</p> <p>Il permesso di soggiorno nei casi di cui al comma 1, lettera b), è immediatamente revocato qualora sia accertato che al matrimonio non è seguita l'effettiva convivenza salvo che dal matrimonio sia nata prole.²⁹³</p>

²⁸⁷ "Disciplina dell'immigrazione e norme sulla condizione dello straniero." Gazzetta Ufficiale n. 59 del 12 marzo 1998 - Supplemento Ordinario n. 40.

<http://www.camera.it/parlam/leggi/980401.htm>

	<p>minori</p> <p>(B) Decreto Legislativo 25 luglio 1998 n. 286²⁸⁸ (aggiornamenti)²⁸⁹</p>	<p>anno rilasciato per lavoro subordinato o per lavoro autonomo ovvero per asilo, per studio o per motivi religiosi.</p> <p>2. Ai familiari stranieri di cittadini italiani o di uno Stato membro dell'Unione europea continuano ad applicarsi le disposizioni del decreto del Presidente della Repubblica 30 dicembre 1965, n. 1656, fatte salve quelle piu' favorevoli della presente legge o del regolamento di attuazione.²⁹⁰</p> <p>(A) Art. 27 Ricongiungimento familiare</p> <p>1. Lo straniero puo' chiedere il ricongiungimento per i seguenti familiari:</p> <p>a) coniuge non legalmente separato; (...)</p> <p>3. Salvo che si tratti di rifugiato, lo straniero che</p>	
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²⁸⁸ TESTO UNICO DELLE DISPOSIZIONI CONCERNENTI LA DISCIPLINA DELL'IMMIGRAZIONE E NORME SULLA CONDIZIONE DELLO STRANIERO. http://www.giustizia.it/cassazione/leggi/dlgs286_98.html#Aggiornamenti

²⁸⁹ *Aggiornamenti:* Il D.Lgs. 19 ottobre 1998, n. 380 (in G.U. 03/11/1998, n. 257) ha disposto (con l'art. 1) la modifica dell'art. 11. Il D.Lgs. 13 aprile 1999, n. 113 (in G.U. 27/4/1999, n. 97) ha disposto (con gli artt. 1, 2, 3, 4, 5, 6, 7 e 8) la modifica degli artt. 3, 12, 13, 33, 42, 46 e 49. Il D.L. 4 aprile 2002, n. 51 (in G.U. 8/4/2002, n. 82), nel testo introdotto dalla legge di conversione 7 giugno 2002, n. 106 (in G.U. 8/6/2002, n. 133) ha disposto (con gli artt. 1 e 2) la modifica degli artt. 12 e 13. Il D.P.R. 30 maggio 2002, n. 115 (in S.O. n. 126/L relativo alla G.U. 15/6/2002 n. 139) ha disposto (con l'art. 299) la modifica dell'art. 13. La L. 30 luglio 2002, n. 189 (in S.O. 173/L, relativo alla G.U. 26/8/2002, n. 199) ha disposto (con gli artt. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 e 29) la modifica degli artt. 3, 4, 5, 6, 7, 9, 11, 12, 13, 13-bis, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32, 39, 40 e 44 e l'introduzione degli artt. 2-bis e 5-bis. La L. 27 dicembre 2002, n. 289 (in S.O. n. 240/L, relativo alla G.U. 31/12/2002 n. 305) ha disposto (con l'art. 80) la modifica degli 5 e 22. La L. 14 febbraio 2003, n. 34 (in S.O. n. 38/L, relativo alla G.U. 11/3/2003, n. 58) ha disposto (con l'art. 5) la modifica dell'art. 12.

Il D.Lgs. 7 aprile 2003, n. 87 (in G.U. 23/4/2003, n. 94) ha disposto (con l'art. 1) la modifica degli artt. 10 e 12. Il D.L. 14 settembre 2004, n. 241 (in G.U. 14/09/2004, n. 216) convertito con L. 12 novembre 2004, n. 271 (in G.U. 13/11/2004, n. 267) ha disposto (con gli artt. 1, 1-bis, 1-ter) la modifica degli artt. 11, 12, 13, 13-bis, 14, 39. Il D.L. 27 luglio 2005, n. 144 (in G.U. 27/7/2005, n. 173), convertito con L. 31 luglio 2005, n. 155 (in G.U. 1/8/2005, n. 177) ha disposto (con gli artt. 3 e 11) la modifica degli artt. 5 e 13.

²⁹⁰ Art 26 The foreigners who have a residence card of at least one year have the right to family reunification.

²⁹¹ Art 27 The right to family reunification is acknowledged, inter alia, towards the spouse not legally separated. The foreigner who applies for family reunification has to demonstrate: first, having an accommodation which meets the minimum standards required by the regional law; second, having an annual income superior to the annual social allocation. This minimum level of income increases with the number of family members.

²⁹² Art. 30 The residence permit for family purposes is granted to foreigners who have been lawfully residing in the country for one year and who are married to national citizens, citizens of another EU Member state or third country nationals regularly staying in the country.

²⁹³ Art. 30, 1-bis. The residence permit - granted according to Art. 30, 1, b, - is immediately withdrawn in those cases where the marriage has not been followed by cohabitation.

		<p>richiede il ricongiungimento deve dimostrare la disponibilita':</p> <p>a) di un alloggio che rientri nei parametri minimi previsti dalla legge regionale per gli alloggi di edilizia residenziale pubblica, (...);</p> <p>b) di un reddito annuo derivante da fonti lecite non inferiore all'importo annuo dell'assegno sociale se si chiede il ricongiungimento di un solo familiare, al doppio dell'importo annuo dell'assegno sociale se si chiede il ricongiungimento di due o tre familiari, al triplo dell'importo annuo dell'assegno sociale se si chiede il ricongiungimento di quattro o piu' familiari. Ai fini della determinazione del reddito si tiene conto anche del reddito annuo complessivo dei familiari conviventi con il richiedente.²⁹¹</p> <p>(B)Art. 30 Permesso di soggiorno per motivi familiari</p> <p>1. Fatti salvi i casi di rilascio o di rinnovo della carta di soggiorno, il permesso di soggiorno per motivi familiari e' rilasciato:</p> <p>b) agli stranieri regolarmente soggiornanti ad altro titolo da almeno un anno che abbiano contratto matrimonio nel territorio dello Stato con cittadini italiani o di uno Stato membro dell'Unione europea, ovvero con cittadini stranieri regolarmente soggiornanti;(…)²⁹²</p>	
LATVIA	<p>Immigration Law, in force since 01.05.2003 OG 169 20.11.2002, Amendments to Immigration Law, 16.06.2005, OG 101</p>	<p>Art. 23</p>	<p>point 11, paragraph 1 of Article 35 point 20 of paragraph 1 of Article 35 point 6 of paragraph 1 of Article 35</p>

	30.06.2005		
MALTA	Subsidiary legislation 217.06 FAMILY REUNIFICATION REGULATIONS; 5th June, 2007 LEGAL NOTICE 150 of 2007²⁹⁴	<p>§ 3. (1) The sponsor shall be entitled to apply for family reunification subject to the following conditions: (a) if the members of his family are third country nationals; and (b) he is holding a residence permit valid for a minimum period of one year; and (c) he has reasonable prospects of obtaining the right of permanent residence.</p> <p>§ 4. (1) Subject to the provisions of Part V and of regulations 18, 19 and 20, the Director shall authorise the entry and residence of the following family members: (a) the sponsor's spouse who shall be twenty-one years of age or over; Provided that in the event of a polygamous marriage, where the sponsor already has a spouse living with him in Malta, the Director shall not authorise the family reunification of a further spouse;</p> <p>§ 5. (2) The sponsor may not submit an application for family reunification before he has resided legally in Malta for a minimum period of twelve months.</p>	<p>§ 18. The Director may reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew a family member's residence permit, in the following circumstances: (d) where it is shown that the family reunification permit was based on false or misleading information, false or falsified documents, or otherwise fraudulently obtained; and (e) where it is shown that the marriage or adoption which are the subject of the application for family reunification was contracted solely for the purpose of enabling the person concerned to enter or reside in Malta.</p> <p>§ 20. The Director may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage or adoption of convenience as defined by regulation 18(d) and (e). Specific checks may also be undertaken on the occasion of the renewal of residence permits of family member</p>
SLOVENIA	Aliens Act 2005 amended by act of 29 Sept. 2005 (Ur.l. RS/Official Gazette, No.61/99,87/02,96/02, 93/05, 112/05 – officially consolidated text, 97/06,107/06 –	<p>Art. 36: Family reunification and the right to family integrity 1) Aliens who reside in the Republic of Slovenia on the basis of a permit for permanent residence and aliens who have resided for the past year in the Republic of Slovenia on the basis of a temporary residence permit which was issued for a period of at least one year shall be granted, under the conditions of and in accordance with this Act, the right to reunion, preservation and reintegration of the family with immediate family members who are aliens.</p>	<p>Art. 43 Refusal to issue a residence permit 1) An alien shall not be granted a permit for residence in the Republic of Slovenia if: - the conditions laid down in the third and fourth paragraphs of Article 27 of this Act are not fulfilled, - the alien has been imposed prohibition of entry to the country, - there are reasons to assume that the alien will not voluntarily leave the Republic of Slovenia after the validity of his permit expires, - there is a suspicion that the alien might pose a threat to public order and safety or the international relations of the Republic of Slovenia, or if there is a suspicion that the alien's residence in the country will be</p>

²⁹⁴ <http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/217/06.pdf>

	officially consolidated text) ²⁹⁵	<p>2) An application to be issued a permit for first residence shall be filed with the diplomatic consular mission of the Republic of Slovenia abroad or with a competent authority in the Republic of Slovenia.</p> <p>3) In accordance with this Act, the alien's immediate family members shall be deemed to be:</p> <ul style="list-style-type: none"> - the spouse; - the alien's unmarried children (minors); - the spouse's unmarried children (minors); - the parents of minor alien; - the alien's or the spouse's unmarried children who have reached the age of majority and the alien's or the spouse's parents whom the alien or spouse is obliged to maintain in accordance with the legislation of the state of which he or she is a national. 	<p>associated with the committing of terrorist or other violent acts, illegal intelligence activities, drug trafficking or the committing of other criminal acts,</p> <ul style="list-style-type: none"> - there are reasons to assume that the alien will not abide by the legal order of the Republic of Slovenia, - it is clear that a marriage was concluded exclusively or chiefly for the purpose of obtaining a residence permit or if it is established during the procedure of extending the temporary residence permit or issuing a permanent residence permit that an immediate family member does not actually live together in a family union with the alien who is recognized as having the right to family reunion on the basis of this Act
SPAIN	<p>(A) LEY ORGÁNICA 4/2000 (Organic Law on the rights and freedoms of aliens in Spain and their social integration). Amended by OL 8/2000, OL 11/2003 and OL 14/2003²⁹⁶</p> <p>(B) REAL DECRETO</p>	<p>(A) Art. 17 <i>Familiares reagrupables.</i>²⁹⁸</p> <p>1. El extranjero residente tiene derecho a reagrupar con él en España a los siguientes familiares:</p> <p>a) El cónyuge del residente, siempre que no se encuentre separado de hecho o de derecho o que el matrimonio se haya celebrado en fraude de ley. En ningún caso podrá reagruparse más de un cónyuge, aunque la ley personal del extranjero admita esta modalidad matrimonial. El extranjero residente que se encuentre separado de su cónyuge y casado en segundas o posteriores nupcias sólo podrá reagrupar con él al nuevo cónyuge y sus familiares si acredita que la separación de sus anteriores matrimonios ha tenido lugar tras un procedimiento jurídico que fije la situación del cónyuge anterior y sus familiares en</p>	<p>(A) Art. 16 2. El cónyuge que hubiera adquirido la residencia en España por causa familiar y sus familiares con él agrupados, conservarán la residencia aunque se rompa el vínculo matrimonial que dio lugar a la adquisición. Reglamentariamente se podrá determinar el tiempo previo de convivencia en España que se tenga que acreditar en estos supuestos.³⁰⁰</p> <p>(B) Art. 39 a) El extranjero podrá reagrupar con él en España a los siguientes familiares: Su cónyuge, siempre que no se encuentre separado de hecho o de derecho y que el matrimonio no se haya celebrado en fraude de ley. En ningún caso podrá reagruparse a más de un cónyuge, aunque la ley personal del extranjero admita esta modalidad matrimonial.(...)³⁰¹</p>

²⁹⁵ <http://www.policija.si/en/legislation/pdf/AliensAct2006.pdf>

²⁹⁶ http://noticias.juridicas.com/base_datos/Admin/lo4-2000.html

	2393/2004, de 30 de diciembre ²⁹⁷	cuanto a la vivienda común, la pensión al cónyuge y los alimentos para los menores dependientes. ²⁹⁹	
SWEDEN	Swedish Code of Statutes no 2005:716 Aliens Act of (2005:716) 29.09.2005 ³⁰²	Chapter 3a. Right of residence for EEA nationals and others Residence permits on the grounds of ties to Sweden § 3. Unless otherwise provided in Sections 17–17b, a residence permit shall be given to 1. an alien who is a spouse or cohabiting partner of someone who is resident in or has been granted a residence permit to settle in Sweden.	Chapter 3a. Right of residence for EEA nationals and others Residence permits on the grounds of ties to Sweden § 17a. A residence permit may be refused in such cases as are referred to in Section 3, if 2. an alien has been adopted or a marriage entered into or a cohabitee relationship begun exclusively in order to give the alien a right to a residence permit.
UK	(A) Immigration and Asylum Act 1999 ³⁰³ (B) Immigration Rules paras. [277-283] last updated in July 2008 ³⁰⁴	(B) 277. Nothing in these Rules shall be construed as permitting a person to be granted entry clearance, leave to enter, leave to remain or variation of leave as a spouse or civil partner of another if either the applicant or the sponsor will be aged under 18 on the date of arrival in the United Kingdom or (as the case may be) on the date on which the leave to remain or variation of leave would be granted. 281. The requirements to be met by a person seeking leave to enter the United Kingdom with a view to settlement as the spouse or civil partner of a person	(A) Section 24 Duty to report suspicious marriages (1) Subsection (3) applies if— (a) a superintendent registrar to whom a notice of marriage has been given under section 27 of the [1949 c. 76.] Marriage Act 1949, (b) any other person who, under section 28(2) of that Act, has attested a declaration accompanying such a notice, (c) a district registrar to whom a marriage notice or an approved certificate has been submitted under section 3 of the [1977 c. 15.] Marriage (Scotland) Act 1977, or (d) a registrar or deputy registrar to whom notice has been given under section 13 of the [1844 c. 81.] Marriages (Ireland) Act 1844 or section 4 of the [1863 c. 27.] Marriage Law (Ireland) Amendment Act 1863,

²⁹⁷ http://noticias.juridicas.com/base_datos/Admin/rd2393-2004.t4.html#c1s2

²⁹⁸ The same provision has been inserted under article 39 of the Real Decreto.

²⁹⁹ Art. 17 The foreigner who is regularly staying in the country has the right to reunification with: a, the spouse provided he/she is not legally or *de facto* separated and provided the marriage was contracted in fraud of the law.

³⁰⁰ Art. 16(2) The spouse who has acquired the right of settlement for family reasons or for the purpose of family reunification will maintain this right even if the marital status is to finish. The law will specify the minimum time of cohabitation in order to maintain the right of settlement

³⁰¹ Art 39.a) The right to family reunification is linked to the following conditions: the spouse should not be legally or *de facto* separated; the marriage was not contracted in fraud of the law.

³⁰² <http://www.sweden.gov.se/content/1/c6/06/61/22/fd7b123d.pdf>

³⁰³ http://www.opsi.gov.uk/acts/acts1999/ukpga_19990033_en_1

³⁰⁴ <http://www.ind.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

		<p>present and settled in the United Kingdom or who is on the same occasion being admitted for settlement are that:</p> <p>(i) (a) the applicant is married to or the civil partner of a person present and settled in the United Kingdom or who is on the same occasion being admitted for settlement; or</p> <p>(b)(i) the applicant is married to or the civil partner of a person who has a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and is on the same occasion seeking admission to the United Kingdom for the purposes of settlement and the parties were married or formed a civil partnership at least 4 years ago, since which time they have been living together outside the United Kingdom; and</p> <p>(b)(ii) the applicant has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless he is under the age of 18 or aged 65 or over at the time he makes his application; and</p> <p>(ii) the parties to the marriage or civil partnership have met; and</p> <p>(iii) each of the parties intends to live permanently with the other as his or her spouse or civil partner and the marriage or civil partnership is subsisting; and</p> <p>(iv) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and</p> <p>(v) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and</p> <p>(vi) the applicant holds a valid United Kingdom entry clearance for entry in this capacity.</p>	<p>has reasonable grounds for suspecting that the marriage will be a sham marriage.</p> <p>(2) Subsection (3) also applies if—</p> <p>(a) a marriage is solemnized in the presence of a registrar of marriages or, in relation to Scotland, an authorised registrar (within the meaning of the Act of 1977); and</p> <p>(b) before, during or immediately after solemnization of the marriage, the registrar has reasonable grounds for suspecting that the marriage will be, or is, a sham marriage.</p> <p>(3) The person concerned must report his suspicion to the Secretary of State without delay and in such form and manner as may be prescribed by regulations.</p> <p>(...)</p> <p>(5) “Sham marriage” means a marriage (whether or not void)—</p> <p>(a) entered into between a person (“A”) who is neither a British citizen nor a national of an EEA State other than the United Kingdom and another person (whether or not such a citizen or such a national); and</p> <p>(b) entered into by A for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules.</p>
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