



**Department of Balkan, Slavic & Oriental Studies &  
Department of International and European Studies**

**Master's in**

**“HUMAN RIGHTS AND MIGRATION STUDIES”**

**Master Thesis**

**“Forced marriage in the communities of refugees in  
Greece. The legal consequences.”**

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## **Abstract**

Most of us believe that the phenomenon of forced marriage is something that civilized societies have left behind in our days. Unfortunately, reality comes to override this narrative because according to UNICEF 650 million women today have been forced into marriage<sup>1</sup>. Indeed, the phenomenon of forced marriage is easily seen in the part of the world which is called developing countries, but the massive movement of the population has brought forced marriage in developed countries of the European Union as well. Starting from this observation, in this thesis, I am going to define what forced marriage is, which are the causes and the consequences, and the reason why it is reproduced as practice. This topic concerns especially Greece since it has accepted millions of refugees and migrants since 2015 during the breakout of the so-called “refugee crisis”. I will provide valuable information about forced marriage in the Syrian Arab Republic, Afghanistan, Pakistan, and Somalia because forced marriage derives especially from the cultural background of migrants and refugees. Next, I will concentrate on the legal framework of European and International Law and on all the treaties that forbid forced marriage and consider it as a violation of basic human rights. Concerning Greek Law, I will analyze the articles of Greek Civil and Penal law, which refer to forced marriage, and I will present case law from the Greek Courts. In the last part of my thesis, I will explain the International jurisdiction of the Greek Courts concerning forced marriages, which have taken place in Greece or abroad. This thesis aims to inform and make the reader aware of forced marriage giving the tools to recognize and prevent it.

**Keywords:** forced marriage, refugees, violation of human rights, legal framework, case law, Greece, European Legal Framework

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<sup>1</sup> UNICEF. nd, *Child and forced marriage, including in humanitarian settings*. Available at: <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings>

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### **List of Abbreviations**

CEFM	Child, Early, and Forced marriage
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CoCP	Code of Civil Procedure
EU	European Union
ICRW	International Center for Research on Women
ICC	International Criminal Court
STD	Sexual Transmitted Diseases
UNICEF	United Nations International Children's Emergency Fund

## **Introduction**

Ream left Syria at the age of 12 seeking shelter as a refugee in Lebanon. Before that, she was dreaming of a career as a human rights lawyer. However, as her family struggled to survive, her parents decided to marry her to an unknown man double her age. She then became pregnant and her husband assaulted her continuously during her pregnancy. When she asked for a divorce, her husband not only denied it but also sent her back to her family of origin. Three months later, her parents lacking the resources to support Ream and the newborn, forced her to live on the streets. Finally, she returned to her husband, and he decided to rent a house for her, visiting her only to vent his anger<sup>2</sup>.

Ream's story is by no means an exceptional one in that part of the world that we are accustomed to deem it as "developing". In developing countries, one in three girls will marry by eighteen years old, and one in nine will marry by the age of fifteen<sup>3</sup>. In 2018 the Council of Europe in its Resolution 2233 (2018) stated that every day all around the world, 39.000 young girls are married before reaching eighteen years old and one-third of them are younger than fifteen<sup>4</sup>. Every year, 12 million girls are forced into marriage, which means that every two seconds a woman is forced to get married. South Asia and Sub-Saharan Africa have the biggest number of child marriages with South Asia counting 1 in 5 women being married before 18<sup>5</sup> while in Sub-Saharan Africa 40% of women are married as a child<sup>6</sup>. It should be mentioned that Forced and Child marriage occurs in high-income regions such as Canada and the United States, especially in minority communities or rural areas with high rates of poverty<sup>7</sup>. In Europe, forced marriage is a well-known phenomenon since in 2005 the first

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<sup>2</sup> Tenwick, J., n.d. *Stories from the ground child marriage in refugee camp*. SB Overseas International Humanitarian Aid

<sup>3</sup> Hodgkinson, K. (2016). *Understanding And Addressing Child Marriage*. Amsterdam Institute for Social Science Research of the University of Amsterdam, p.7.

<sup>4</sup> Parliamentary Assembly, (2018). *Forced marriage in Europe*. Council of Europe / Resolution 2233 (2018).

<sup>5</sup> UNICEF. (2017) *Child marriage: Latest trends and future prospects*.

<sup>6</sup> Girls Not Brides. (2017) *Child Marriage Around the World* [Internet]. Available at: <https://www.girlsnotbrides.org/where-does-it-happen>

<sup>7</sup> Zaman M, Koski A. (2020) *Child marriage in Canada: A systematic review*. p.p. 15(3):3.

Forced Marriage Unit was created in the United Kingdom for the purpose of collecting data about the subject and providing support to the victims<sup>8</sup>.

Most of the time, forced marriages are unofficial and undocumented, having as a result that specific and reliable statistics on forced marriage are difficult to come by<sup>9</sup>. However, it is known that the practice is widespread, particularly in developing countries. Forced marriage can affect both women and men but it is affecting disproportionately girls on a scale of 82% to 18% for boys. Moreover, they have increased dramatically during the humanitarian crisis due to social and economic pressure putting at risk women's lives. A study that UNICEF conducted in 2014 showed that the Syrian refugees who lived in Turkey were forcibly marrying their girls at the age between 13 and 20 years and many parents said that they would not have married off their daughters under normal circumstances<sup>10</sup>. Moreover, according to another survey by UNICEF, over the next decade, up to 10 million more girls will be at risk of forced marriage as a result of the pandemic<sup>11</sup>.

The reason why I will concentrate on forced marriage among the refugee population in Greece is that since 2015, Greece has experienced an unprecedented number of refugees and foreigners who either fled from their ancestral homelands of Anatolia, Africa, and South Asia due to war or to find a better future in the EU. It is estimated that approximately 857,000 refugees and migrants arrived in Greece in 2015. Over 173,000 came to Greece in 2016 by sea and 30,000 in 2017. More than 45,000 are estimated to be incarcerated in the country<sup>12</sup>. The closing of the borders between the democracies of North Macedonia and Greece at the beginning of March 2016 led to the entrapment of thousands of refugees and immigrants in Greece. Their arrival and, by extension, their emerging needs put under pressure the system of protection and security.

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<sup>8</sup> FM Out (2021). *Finding Ways out to forced marriages. Training Material*. Available at: [https://www.fmout.eu/wp-content/training-materials/Training\\_materials.pdf](https://www.fmout.eu/wp-content/training-materials/Training_materials.pdf)

<sup>9</sup> Forced Marriage (n.d.) End Slavery Now [online] Available at: <http://www.endslaverynow.org/learn/slavery-today/forced-marriage> > [Accessed 12 March 2022].

<sup>10</sup> *Preventing child marriage*. (2022) [online] Available at: <https://www.unicef.org/eca/what-we-do/child-marriage> > [Accessed 12 March 2022].

<sup>11</sup> United Nations Children's Fund, (2021) *COVID-19: A threat to progress against child marriage*. UNICEF,

<sup>12</sup> European Commission (2016) *The refugee crisis in Greece in the aftermath of the 20 March 2016 EU-Turkey Agreement*

In this thesis, I am going to examine only the phenomenon of forced marriage on women and especially concerning the refugee population in Greece. Except for the valuable information that will be provided about the causes and the consequences of such marriages, we will define the legal frame, at the EU and international level, to prevent such acts. Finally, we will discuss the legal consequences of forced marriage, according to the Greek civil and penal law, in relation to the Civil International Law, which concerns forced marriages that have taken place in Greece among third-country nationals.

### **Methodology**

The most challenging part of this thesis is the methodological approach that has been used to create a complete and encompassing survey. As Kirsch and Sullivan say, methodology “*is the underlying theory and analysis of how a research does or should proceed*”<sup>13</sup>. There has been a great effort to keep the research within a legal approach about the phenomenon of forced marriage, but it is extremely difficult to have an in-depth conclusion on it while leaving outside the social analysis. It is known that human rights research encapsulates a wide range of topics and approaches that allow many scientists to discuss the same issue. For example, lawyers that are usually studying human rights, are system builders and rely their surveys on logic to determine if arguments conform to an existing normative framework. As a result, those legal studies usually have no impact on the ground and from this perspective, they make implicit assumptions, with the risk of remaining disconnected from reality. In contrast, social scientists attempt to comprehend social phenomena and their findings can be empirically challenged and verified. This could have the risk of ignoring or misinterpreting applicable legal standards<sup>14</sup>.

For this reason, chapters one and two are based on social research, providing a clear image of the concept of forced marriage, the causes, and the consequences, and giving an analysis of the phenomenon in the countries that most refugees come from. Chapters three to six are based on legal texts, like international treaties, national laws and case studies that provide a deeper analysis of forced marriage and the provisions that states have adopted to

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<sup>13</sup> Kirsch, G., & Sullivan, P. A. (1992). *Methods and Methodology in Composition Research*. Carbondale

<sup>14</sup> Coomans, and others (2009). *Methods of Human Rights Research: A Primer*. Human Rights Quarterly, Vol. 32, pp. 179-186, 2010. Available at: <https://ssrn.com/abstract=1395689> [Accessed: 10/01/2023]

fight the phenomenon. At the end of the thesis, apart from the conclusions that will be analyzed, some good practices will be proposed that will change the narrative on forced marriage and stop the spread of this phenomenon.

The methodological approach that has been used in this thesis is the qualitative analysis because it places an emphasis on understanding interpretation, observations in natural settings, and closeness to data from an insider's perspective<sup>15</sup>. This analysis has been used in order to be easier for the researcher to collect in-depth information on what the community says or does in their natural environment and how forced marriage affects the women who are involved. It should be mentioned that in Greek literature and the legal world, there is not much information about the phenomenon of forced marriage, and this is a problem that the researcher had to overcome by studying and comparing a lot of information from different sources.

To draw a solid conclusion for the analysis of the data that has been collected, the researcher analyzed the collected data with three main methods: literature review (secondary research), law review, and case studies. A literature review refers to a research method that examines already existing data, either primary or secondary. Law review entails the study of court decisions, which provide broad and in-depth perspectives on laws, various stakeholders' actions and the societal context in which these operate, helping the researcher to feel safe about deducing conclusions. The right selection of the cases that have been analyzed, has helped the researcher to identify the circumstances in which the theories on forced marriage can be effectively tested.

## **Chapter 1**

### **Elements of Forced Marriage**

#### **1.1 Understanding Forced Marriage**

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<sup>15</sup> Ghauri, P. (1995). *Research methods in business studies: A practical study*. New York: Prentice Hall



There is no official internationally agreed definition of forced marriage<sup>16</sup>. The choice of a definition is difficult for two reasons: first, the social and moral dimensions of marriage are difficult to encompass within a legal definition, and second, the dual meaning of "marriage," which designates both the immediate action that initiates the state of being married and the state itself. Consent, coercion, and duress are common aspects reflected in the interpretations of forced marriage by EU and international bodies. As issues of autonomy and consent lie at the heart of the human rights approach to forced marriage, any discussion of this issue must inevitably engage with the difficulty of determining the boundaries between consent and coercion.

To discuss this on a common basis, we need to define forced marriage. The United Nations Secretary-General Kofi Annan, in his 2006 study on all forms of violence against women proposes that forced marriage is one that *"lacks the free and valid consent of at least one of the parties. In its most extreme form, forced marriage can involve threatening behavior, abduction, imprisonment, physical violence, rape and, in some cases, murder"*<sup>17</sup>. The most common definition, that many professionals use, is the marriage that lacks meaningful consent and constitutes gender-based violence against women with a vast violation of basic human rights. For these reasons, the term "forced marriage" encompass child and early marriage because minors do have the ability to provide informed and full consent.

In 2005 the Council of Europe in a study about Forced Marriage in Council of Europe Member States gives a very broad definition, stating that forced marriage is *"an umbrella term covering marriage as slavery, arranged marriage, traditional marriage, marriage for reasons of custom, expediency of perceived respectability, child marriage, early marriage, fictitious, bogus or shame marriage, marriage of convenience, unconsummated marriage,*

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<sup>16</sup> Morten K. (2014). *Addressing forced marriage in the EU: legal provisions and promising practices*. – European Union Agency for Fundamental Rights. p. 7. Available at: [https://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu\\_en.pdf.pdf](https://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf.pdf) [Accessed 29 June 2022].

<sup>17</sup> United Nations General Assembly. (2006) *In-depth study on all forms of violence against women: Report of the Secretary-General*. Available at: <http://daccessddsny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement> [Accessed 29 June 2022].

*putative marriage, marriage to acquire nationality and undesirable marriage – in all of which the concept of consent to marriage is at issue<sup>18</sup>.”*

In 2012 the Special Rapporteur on Slavery issued a report in which forced marriage is seen as a form of slavery: *“Under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, all forms of forced marriage are defined as practices similar to slavery, which reduce a spouse to a person over whom any or all of the powers attaching to the right of ownership are exercised. International law has further reiterated and reinforced the provisions within the Convention that prohibit forced and early marriages. Over the years, however, the idea that forced and early marriages are forms of slavery and, therefore, servile marriage has been lost.*

*Reaffirming forced and early marriages as slavery-like practices is important as it provides an understanding of the violations that victims endure and the kind of interventions required to prevent, monitor and prosecute servile marriage. Victim protection programmes can also be specifically tailored better to support victims of servile marriage. Victims of servile marriage are often unable to escape because their families and/or the societies in which they live will not support them, whether for economic reasons or for traditional, cultural and religious beliefs. Such beliefs and practices cannot, however, be used to justify servile marriage<sup>19</sup>.”*

Speaking about forced marriage, it should not be confused with the terms “arranged marriage” or “marriage of convenience”. Arranged marriages are those where the family or a matchmaker chooses the groom or the bride but the spouses still have the choice to accept or reject the marriage. The family may play a significant role in choosing the wife but, the final decision is up to each party in the marriage. On the other hand, a marriage of convenience is taking place in order to allow the person concerned to enter or reside in a Member State.

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<sup>18</sup> Edwige Rude-Antoine. (2005) *Forced marriages in Council of Europe member states, A comparative study of legislation and political initiatives*. p.7.

<sup>19</sup> United Nations General Assembly (2012). *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian*. Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-41\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-41_en.pdf) [Accessed 2 June 2022]

To conclude, is forced marriage a problem only when the marriage is violent, the husband abuses the woman and there is a big age gap between the spouses? What is happening when the woman declares that after all, she is happy in a marriage which took place against her will? How could social norms and traditions change over time so that women could understand the violation of their rights when entering into a marriage without their true will? All these questions are going to be answered in the next pages of this dissertation.

## **1.2 Causes of forced marriage**

To understand deeper the phenomenon of forced marriage more, we should first examine the causes of it, which are entangled with historical, cultural, economic, and legal specificities. Forced marriage has been a common practice at different points in the history of many societies around the globe, including Europe and the United States. However, for what we are concerned about here, there seems to be a common pattern that expresses the unequal gender norms and hierarchies, giving men power over many critical events and decision-making processes. As Hodgkinson points out, "*forced marriage can be seen as a way of transferring their [the fathers] patriarchal rights to their daughter over to another man*<sup>20</sup>".

To begin with, culture plays an important role in forced marriages, even though it is difficult to define what it is. Culture can generally be defined as the beliefs and behaviors that a social group shares. It is the way of living in a society and all the members should follow this way. Culture can be shaped by religious norms and the idea underlies that all the members have to contribute and follow the norms of society. Customs are produced by tradition and Black's law dictionary defines custom as, "*a usage or practice of the people, which, by common adoption and acquiescence and by long and unvarying habit, has become compulsory, and has acquired the force of a law concerning the place or subject-matter to which it relates*<sup>21</sup>".

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<sup>20</sup> Hodgkinson, K. (2016). *Understanding And Addressing Child Marriage. A scoping study of available academic and programmatic literature for the HER CHOICE Alliance*. Amsterdam Institute for Social Science Research of the University of Amsterdam, p.7.

<sup>21</sup> CUSTOM Definition & Legal Meaning. Black's Law Dictionary.

The idea of marriage and the function of “family” varies around the world and it is under evolution from time to time. For example, in Europe, until very recently, it was considered to be an economic deal between the father of the bride and the groom, in which the consent of the woman had no significance because she was seen as property, transferred from her father to her husband.

It took a long time for the romantic perspective of marriage to become ideal, in which love, consent and individual fulfillment were the primary goals. Over time the “familist” system became dominant and women had to follow the norm and married the one who is indicated by their family. Culture played an important role in this system, which is characterized by extended families, communal households, the authoritarian exercise of power by the male members of the family and marriage at a young age since puberty begins. In this system, the creation of a family plays a dominant role and girls must be married at a young age. The family is the basic unit of economic output, and its members' only source of money, social status, and security. To sustain the household and maintain the family, new children (particularly boys) are required. Under the pressure of society, women do not have the choice to disagree with their families, having as a result a forced marriage without their true will and consent.

Furthermore, gender roles have been an important cause in the context of unequal economic relations<sup>22</sup>. In this sense, in several cases, brides carry for their families of origin a financial value. In the case of Afghanistan for example, a recent UNICEF report points the transactional nature of marriage involving exchanges of money or goods as one of the main reasons for the persistence of forced marriage. Young girls are considered to be an extra mouth that has to be fed and simultaneously a way to get the family out of despair if they manage to marry them to a good husband who will offer the right amount of money or goods.

In addition, early marriage in several cases provides financial security for the women that are thought to be fit for doing the domestic work and raising the children in contrast with the man who is the one who works in the public sector. This means that women do not have opportunities to build any other future, as they are excluded from gaining financial

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<sup>22</sup> Francesco D'A. and others. (2021). *Gender roles produce divergent economic expectations*. PNAS. Available at: <https://www.pnas.org/doi/10.1073/pnas.2008534118> [accessed: 2 June 2022]

independence. Thus, a good marriage is considered a solution for their future. If there are no other alternatives, forced marriage is the one-way destination to survive. In many cases, the significant age gap expresses the husband's aspiration to dominate his wife. Young brides are expected to be sexually passive virgins, submissive to their husbands. The role then of young brides is defined as keeping the household and giving birth to as many children as possible.

Religious norms are yet another factor legitimizing forced marriage<sup>23</sup>. In several cases, parents consider marriage as a religious obligation, and at the same time, religious leaders advise early marriage to prevent pre-marital sex. It is well known from anthropological literature that in several societies sexual activity outside marriage is unacceptable for women posing a threat to the honor of the family which is thought to be a cultural capital that needs to be guarded. In the Afghani context again, religious leaders, like mullahs and imams, play a key role in community perceptions and practices of forced marriage. Not only are they considered to be trusted voices on a topic generally considered to be primarily religious in nature, but they have an active role in the process and practice of marriage as an overwhelming majority of marriages are performed by them.

In this context, it is not rare for some societies to excuse the rape of a woman if the perpetrator marries the victim<sup>24</sup>. Given the scarcity of alternatives, the assumption is that a woman who lacks sexual integrity is a "lost case" in terms of social fulfillment and that any marriage would be restorative and charitable to her.

Forced marriage is on the rise during armed conflicts and civil wars<sup>25</sup>. In Afghanistan for example, the continuous war with the Taliban has led to an increase in forced marriages. Women are captured during wars and are forced into marriage with the soldiers. This was the case for the Yazidi women in the war in Syria, the Afghan women during the war in

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<sup>23</sup> Petra K. (2019) *Early or Forced Marriages at the Intersection of Religion, Gender and the State*. Woolf Institute Available at: <https://www.woolf.cam.ac.uk/blog/early-or-forced-marriages-at-the-intersection-of-religion-gender-and-the-state> [Accessed 2 June 2022]

<sup>24</sup>United Nations Convention on the Rights of the Child. (1997). *Concluding observations on the Committee of the Rights of the Child: Algeria*. Available at: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G97/170/02/PDF/G9717002.pdf?OpenElement> [Accessed 2 June 2022]

<sup>25</sup> Dyan M. and others. (2019) *Child marriage in armed conflict*. International Review of Red Cross. Available at: <https://international-review.icrc.org/articles/child-marriage-armed-conflict> [Accessed 2 June 2022]

Afghanistan, and the Vietnamese women in Vietnam<sup>26</sup>. Women become trophies for the winners and are forcibly taken from their families. This is the reason why parents are trying to marry their daughters abroad, or to a rich old man who could help them to have a better life, preventing them from rape, trafficking, sexual abuse, and child abduction.

### **1.3 Consequences of forced marriage**

The consequences of forced marriage are multiple and multidimensional and do not have only short-term effects, but can affect a woman's whole life. The impacts of such marriage are physical, psychological, and economic, resulting in women's deprivation of the opportunity to know, exercise, and enjoy basic human rights. Apart from the consequences that women are facing, societies are also deeply affected by forced marriage, economically and politically. The International Center for Research on Women indicates that early marriage can reduce earnings in adulthood by 9%, which means 179 million USD per year in Burkina Faso, 4.8 billion dollars per year in Bangladesh, and 7.6 billion USD per year in Nigeria, including additional earnings and productivity.

To begin with, health problems are common when we are referring to forced marriage because in most cases the bride is a minor or a very young girl. Pregnancy at this age is dangerous for the mother and the baby with maternal fatality being the most serious consequence of such marriages. UNICEF reported in a survey in 2007 that a girl younger than 15 years old is five times more likely to die during pregnancy and childbirth than a woman in her 20s.<sup>27</sup> Girls and young women have to demonstrate their fertility and get involved in sexual intercourse with their husbands at a very young age but their bodies are too immature. When a pregnancy occurs, the mother's and baby's risks are too high, if the girl is between ten and nineteen years old. The mother can suffer from eclampsia, a severe condition where high blood pressure results in decreased alertness, convulsions, and finally, death. Also, if she has prolonged obstructed labor, she may suffer from obstetric fistula,

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<sup>26</sup> Chile Eboe-Osuji. (2012) *International law and sexual violence in armed conflicts*. International Humanitarian Law Series p. 37

<sup>27</sup> UNICEF (2008). *Progress for Children. A report card on maternal mortality*. Available at: [https://www.unicef.org/media/86471/file/Progress\\_for\\_Children-No.\\_7\\_Lo-Res\\_082008.pdf](https://www.unicef.org/media/86471/file/Progress_for_Children-No._7_Lo-Res_082008.pdf) [Accessed 2 June 2022]

which is related to excruciating pain for days, infection, and incontinence, which leads the mother to social isolation and maybe death, if it is left untreated.

Another study states that the baby is at risk of losing his life because it may be born with a very low weight (2.5 kilos) and may suffer from serious communicable disabilities<sup>28</sup>. Moreover, girls do not have a supportive network to inform them about practical issues and do not have experience for breastfeeding, hygiene, and protection. Having the entire household to carry out, they do not have sufficient time to rest or eat properly leading to malnutrition.

In several cases, the husband already has been sexually active, so transmission of STDs (including but not limited to, HIV) in child marriage is widespread. Girls do not have the power nor the knowledge to negotiate safe sex, getting frequently involved in unprotected sex. A study in Kenya and Zambia pointed out that girls who have been married between 15 and 19 had 75% more chances to contract HIV than girls of the same age who were sexually active, but unmarried<sup>29</sup>. Moreover, as the writer Kamwenubusa informs us, Tatu, a young girl from Burundi, was forced to marry when she was 15. After having two children, she was infected with HIV by her husband, *“I was not ready emotionally or physically to have sexual relationships with a man”* said Tatu. *“I face domestic violence and have been exposed to complications during pregnancy and birth<sup>30</sup>”*. Globally, 44% of young girls aged 15-19 believe that their partner or spouse is justified in conducting physical harm against their wife.

As Tatu narrates, forced marriage leads frequently to domestic violence as well. Girls who marry early are more likely to believe that a man is justified in beating his wife than women who are married late. The greater the age difference between the wife and the husband, the bigger the possibility to experience intimate partner violence. Many times, husbands and in-

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<sup>28</sup> UNICEF (2008). *Progress for Children. A report card on maternal mortality*. [on line] Available at: <[https://www.unicef.org/media/86471/file/Progress\\_for\\_Children-No.\\_7\\_Lo-Res\\_082008.pdf](https://www.unicef.org/media/86471/file/Progress_for_Children-No._7_Lo-Res_082008.pdf)> [Accessed 2 June 2022]

<sup>29</sup>Glynn JR. et al. (20021). *Study Group on the Heterogeneity of HIV Epidemics in African Cities. Why do young women have a much higher prevalence of HIV than young men? A study in Kisumu, Kenya and Ndola, Zambia*. AIDS. National Library for Medicine [online] Available at: <https://pubmed.ncbi.nlm.nih.gov/11686466/> [Accessed 2 June 2022]

<sup>30</sup> Girls Not Brides, n.d. *Forced marriage in Burundi puts young girls at risk of HIV infection*. [online] Available at: <<https://www.fillespasepouses.org/articles/forced-marriage-burundi-puts-young-girls-risk-hiv-infection/>> [Accessed 29 September 2022].

laws abuse the brides because they consider them as their property, and the brides cannot resist such behavior due to their immaturity and lack of experience. Domestic violence may also refer to forced sexual activities and rape, but because there is the context of "marriage," they are not seen as abuse but as a standard procedure that the female should obey the male's desires. A study of ICRW, which took place in India, showed that girls who get married before 18 years old have double chances to experience physical violence and triple chances to experience sexual violence as girls who get married at a later age<sup>31</sup>.

Last but not least, the vast psychological consequences of forced marriage should be mentioned. Self-harm and suicide are among the most serious effects that women are dealing with. Isolation from all the activities and deprivation of social life combined with abuse leads the victims to commit suicide or attempt to. A survey that took place in 2017 in Germany and examined the phenomenon of forced marriage among migrants in the country, showed that women who had been forced into marriage had made at least four suicidal attempts<sup>32</sup>. Young girls usually find closed doors concerning school and social activities, staying indoors, and taking care of the household without any support, leaving them isolated and powerless. If a woman tries to escape from the marriage, she will probably face the so-called "honor crime" in which the family of her husband will take revenge on the woman herself or on her family by killing another member, to "clean the name of his family".

## **Chapter 2**

### **Forced Marriage and Refugees in Greece**

#### **2.1. The so-called "refugee crisis" in Greece**

In 2010 Europe had already started accepting many refugees from third-country nationals, especially from Syria, Afghanistan, and Africa. The civil war in Syria, the uprising danger of the Talibans in Afghanistan, and the "Arab Spring" in Africa caused massive refugee flows. In 2015 Greece faced the so-called "refugee crisis" and as of November 2017, there

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<sup>31</sup> Srinivasan and others. (2015). *District-level study on child marriage in India: What do we know about the prevalence, trends and patterns?* New Delhi, India: International Center for Research on Women p. 16

<sup>32</sup>Jan Ilhan Kizilhan. *Forced Marriage and Mental Health by migrants in Germany*. (2017) Archives of Community Medicine and Public Health.



were 62,000 asylum seekers officially registered in the country<sup>33</sup>. In 2021 28,320 people asked for asylum in Greece of which 15,665 were men, 4,210 were women and 8,445 were children<sup>34</sup>.

As it is easily understood all those people brought to Greece customs and traditions that may not be accepted in Greece and any other European country. One of these “traditions” is the phenomenon of forced marriage, with marriages either taking place in their country of origin or here in Greece. In order to have a deeper understanding of the cultural background, which lies in forced marriage, we need to examine the traditions and the way of thinking in the mother countries. According to the previous survey in 2021 more asylum seekers were from Afghanistan, Syria, Pakistan, and Somalia. At this point, we are going to discuss forced marriage in these countries to have a deeper understanding of this phenomenon when it comes to Greece.

## **2.2 Forced Marriage in Afghanistan**

Afghanistan is considered one of the worst places to live for women<sup>35</sup>, but it was not always like that. Back in 1978, the People's Democratic Party of Afghanistan came to power and attempted to promote policies that would free women from the *burqa*, abolish child marriage and prohibit the *purdah* (seclusion). One year later, article 71 of the Afghan Civil Law Code -which is still in force-, determined the minimum marrying age to sixteen years for girls and eighteen years for boys, with an exemption if there is permission from the father or the judge, so the minimum age is fifteen years<sup>36</sup>.

The situation changed when Mujahedin took power in 1989 and declared Afghanistan an Islamic state, implementing *Sharia* Law. The advance of the Taliban in power brought more restrictions on women’s rights, by enforcing the *purdah*, imposing the “proper” dressing code, and forbidding women to go outside of their house without the accompaniment of a

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<sup>33</sup>International Rescue Committee, n.d. *Refugees in limbo: Greece, Country Facts* <https://www.rescue.org/country/greece> [accessed 25/6/2022]

<sup>34</sup> MoMA, Factsheet December 2021, available at: <https://bit.ly/3tA7eA0> [accessed 25/6/2022]

<sup>35</sup> *Afghanistan - “The Worst Place To Be Born In The World”* (2018) [online] Available at: <<https://observatoryihr.org/blog/afghanistan-the-worst-place-to-be-born-in-the-world/>> [Accessed 1 June 2022].

<sup>36</sup> Grigsby, H. (2013). *A Hidden Crisis: Early Marriage In Afghan Society* p.p 6-9. Available at: <https://www.researchgate.net/publication/313024167>

relative male. In addition, they restricted women's ability to work, receive education, and receive healthcare. These practices brought women to an inferior status and reinforced the customary patriarchal social structures, which finally lead to an increase in forced marriages.

According to a study by Human Rights Watch in 2012, it was estimated that in Afghanistan, 70% to 80% of women are forced to marry and 57% of girls marry before reaching the legal marriage age of 16. Most women interviewed declared that they were married before 18 years, the youngest age of marriage was ten years old, and the oldest age was twenty. Of the total number of 100.000 births, 820 resulted in maternal death<sup>37</sup>. Moreover, another national-level study about Afghanistan showed that 59% of women had been in forced marriage<sup>38</sup>.

Religion plays a core role in Afghanistan, so Taliban leaders encourage forced-child marriage to avoid girls' illicit sexual relations before the wedding, and parents believe that marriage will protect girls from sexual abuse or rape, offering them a safe environment to create a family. Furthermore, the Taliban era has left behind extreme rates of poverty and economic disaster. This fact, as we have already pointed out, played a vital role in the increase of forced marriage. Families consider their girls as an opportunity to overcome poverty or to pay a debt.

This permits rich older men to offer princely dowries to a girl's parents in return for the marriage. In certain cases, brides become an object of the straightforward transaction, exchanging a female from one family for another female from another. This practice is known as *baadal* or exchange marriage, which is deeply rooted in Afghani cultural norms and suggests a different path for understanding forced marriage. Abusive behavior toward the bride from her husband or the in-laws consequently leads to a similar behavior to the exchanged bride. In this case, religion is more powerful than local customs as *baadal* is

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<sup>37</sup> Human Rights Watch. (2012). *I Had To Run Away: The Imprisonment of Women and Girls for 'Moral Crimes' in Afghanistan*. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [accessed 16 June 2022].

<sup>38</sup> Global Rights: Partners for Justice. (2008). *Living with Violence: A National Report on Domestic Abuse in Afghanistan.*, p. 14

forbidden by Islam, its perpetuation however reproduces toxic masculinity and violence against the brides<sup>39</sup>.

Another widespread practice is *baad* in which a family can offer a daughter to end conflicts with another family. Robena was sixteen years old when her father killed a person and gave her as a bride to the family he had hurt to compensate for the death. When her son was only six-months-old, her husband died, and the husband's family decided to marry her to the brother-in-law, a much older man whom she did not want to marry. She decided to kill herself before the marriage to the old man<sup>40</sup>. Robena's story points to the multiple functions of women exchange in Afghani society, depicting the reality that many girls face today in Afghanistan when they are forced to get married to pay the debts of their families.

Another development that influenced the frequency of forced marriage in Afghanistan has been Taliban's ban on opium production in 2000-2001. Consequently, many families struggled to survive due to their debts to drug dealers. During this time, women became "opium brides" who faced extreme violence, re-sold as brides, and were trafficked or forced to prostitute. This was the case of a twelve-year-old girl, whose father decided to marry her to a man from another province, double her age, and with eight children. Her father had borrowed cash for his poppy venture and it was up to her to pay back that debt<sup>41</sup>.

Many unmarried women are trying to run away and escape from forced marriage. Unfortunately, they end up in prisons charged with "moral-crimes" or "*zina*" even though it is not an official offense according to the Afghan Penal Code. In 2011 the Afghan Supreme Court issued a directive that "running away" is a crime.

Today the situation in Afghanistan is harder than ever before concerning women's rights. The second takeover of the country by the Taliban in August 2021, created great concerns about forced marriage because, during the first takeover back in 1996, women were not allowed to participate in any activity outside of the household. Everyone was surprised when

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<sup>39</sup> Grigsby, H. (2013). *A Hidden Crisis: Early Marriage In Afghan Society* . p. 15. Article available at: <https://www.researchgate.net/publication/313024167>

<sup>40</sup> Girls Not Brides. (2012). *Robena's Story, Afghanistan* [online] Available at: <https://www.girlsnotbrides.org/girls-voices/robenas-story-afghanistan/> [Accessed 1 June 2022]

<sup>41</sup> Hoonsuwan, M. (2013). *Afghanistan's Opium Child Brides*. The Atlantic, [online] Available at: <https://www.theatlantic.com/international/archive/2012/02/afghanistans-opium-child-brides/252638/> [Accessed 26 May 2022].

in December 2021 the leader of the Taliban's Hibatullah Akhunzada declared that forced marriage should stop and women should select in free will their husband<sup>42</sup>. The international community was very skeptical about this statement and considers that Taliban's tried to deceive the West to get funding release. Until now there are no official records concerning forced marriage in the second Taliban era in Afghanistan.

### **2.3 Forced Marriage in the Syrian Arab Republic**

*"I never wanted to get married young. I was studying in Syria. But then the troubles started, and my parents decided I should marry. It was one of our cousins, someone I knew and liked"* narrates Rime (not her real name), a young Syrian refugee in Lebanon<sup>43</sup>. In Syria, the breakout conflict in 2011 was the main reason for the increased rate of forced marriage among Syrian refugees in neighboring countries (Lebanon, Jordan, Turkey). Before the war, forced marriage was a common practice, even though the minimum wedding age is 18 for men and 17 for women, (article 16 of the Personal Status Law - *qanun al-ahwal al-shakhsiyya*). This could be overcome though and give the possibility of marriage at the age of 15 or even 13 if there is permission from the court<sup>44</sup>.

The war in Syria left many families unprotected without a male in the house. That led to many single mothers feeling insecure and unprotected in exile, living alone in huge refugee camps where rapes and sexual harassment are a daily phenomenon. *"I'd rather be violated by one man than by every man in town"* says Maya, a Syrian refugee who was forced to be married at the age of 14<sup>45</sup>. Moreover, the protection of the honor of the girl (*al Sutra*) and the reputation of the family put pressure on girls to get married, to protect them from sexual activities outside of marriage. The community expectations forced parents to marry their

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<sup>42</sup> AL JAZEERA, (2021). *Taliban bans forced marriage of women in Afghanistan*. [online] Available at: <<https://www.aljazeera.com/news/2021/12/3/taliban-bans-forced-marriage-calls-for-equal-rights-for-women>> [Accessed 26 June 2022].

<sup>43</sup> Longman, J. (2016). *Child brides: The Syrian girls pushed into early marriage*. BBC NEWS, [online] Available at: <<https://www.bbc.com/news/world-middle-east-37617523>> [Accessed 2 June 2022].

<sup>44</sup> LANDINFO (2018) *Syria: Marriage Legislation And Traditions.*, pp.11, 20, 24.

<sup>45</sup> Anderson, S. (2013). *Child Marriages Rise Among Syrian Refugee Girls*. *The Atlantic*, [online] Available at: <<https://www.theatlantic.com/international/archive/2013/05/child-marriages-rise-among-syrian-refugee-girls/276287/>> [Accessed 2 June 2020].

girls to conform with community trends, considering that refugee camps for Syrians in neighboring countries reproduced the pre-war ethical norms in Syria.

Furthermore, financial needs motivated forced marriage in refugee camps. Manal, a Syrian Refugee, leaving in a Jordan refugee camp, says: *"Life here is very hard, and we receive very little aid. We have a baby who needs lots of milk every day, and we can't afford to pay the rent. So I had to sacrifice Kazal to help the other members of the family<sup>46</sup>".* Syrians girls are known in the neighboring countries for their green or blue eyes and their white skin; so, many affluent men give considerable amounts as dowries to marry girls from Syria. This is considered to be a solution for both the family and the girl, who is expected to live a better life on the side of a rich man, and at the same time, the family gets rid of an extra mouth to feed and gain a good amount of money in order to survive.

All these reasons lead to a significant increase in forced marriage among Syrian refugees in countries where they are finally settled, like Greece. Girls do not have any other choice but to try to build a better future due to the lack of proper education, which would increase future work opportunities. This makes them dependent on men, resulting in a lack of prospects and the continued presence of patriarchal implications associated with forced marriage. Girls do not give their true consent to marriage since they are not mature or have the knowledge to agree with such an action. This creates higher possibilities of continued physical and emotional domestic violence associated with the transmission of HIV and maternal mortality.

#### **2.4 Forced Marriage in Pakistan**

Patriarchal perceptions and deep-rooted stereotypes about the role and responsibilities of women in Pakistan lead to systematic discrimination against them and the maintenance of their subordination within the family and society. Notably, in a survey conducted in 2018, Pakistan was ranked as the 6th most dangerous and 4th worst country in the world for women in terms of their economic status and discrimination, as well as the

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<sup>46</sup> McLeod, B. (2013). *Syrian refugees 'sold for marriage' in Jordan*. BBC NEWS, [online] Available at: <[https://www.bbc.com/news/world-middle-east-22473573?goback=.gde\\_1887804\\_member\\_239768092](https://www.bbc.com/news/world-middle-east-22473573?goback=.gde_1887804_member_239768092)> [Accessed 23 May 2020].

risks they face due to cultural, religious, and traditional practices, including honor crimes<sup>47</sup>.

The above is also confirmed by the UN Commission on the Elimination of Discrimination against Women, which, in its report from 2020, expresses its concern about the stereotypes that still exist regarding the roles and responsibilities of women and of men in the family and society, which are exacerbated by the religious divisions in the country. In addition, concern is also expressed about the persistence of dangerous practices against women, such as child marriages, forced marriages, and honor crimes ("karo kari"). Despite the existence of a legal framework that focuses on women's rights, according to the Human Rights Commission of Pakistan, the fact that violent and illegal practices against women continue to be observed and escalating, indicates the enormous challenges in implementing the law and the deep-rooted social beliefs<sup>48</sup>.

In general, Muslim societies where romance has no place in marriage, support the social structure and alliance between families, generations, and clans and the reproduction and generation of offspring. Therefore, marriage is a tool, a means to an end. Romanticism, on the other hand, is the structural antithesis, concerned with personal gratification, always secretly and in violation of official morals. This structural contrast explains why all forms of illicit romance cause condemnation, ostracism, and frequent murder of those involved. It is not only a threat to "personal honor" but also to "collective honor" that subscribes to the same code of honor. This explains why neighbors and unrelated villagers often praise honor crimes<sup>49</sup>.

Women are socially excluded in patriarchal societies like Pakistan, unable to participate in or influence programs, laws, and policies that directly or indirectly benefit them. Although increased political participation by women has resulted in advanced legal protections for women over the last decade, the average woman is still largely unaware of her rights and lacks access to services and formal justice systems. If she seeks justice, she will face numerous obstacles that rationalize, minimize, or trivialize wrongs done to her.

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<sup>47</sup> UK Home Office, Country Policy and Information Note (2020)– *Pakistan: Women fearing gender-based violence*, version 4.0, p.p. 19-20. available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/866082/Pakistan-Women-CPIN-v4.0\\_Feb\\_2020\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866082/Pakistan-Women-CPIN-v4.0_Feb_2020_.pdf)

<sup>48</sup> UK Home Office, op.cit p. 43

<sup>49</sup> New Horizon (2010) *A Sociological Analysis of Honour Killing in Pakistan: A Case of Sindh Province*

From birth to death, she is trained and socialized to be good, to compromise, to sacrifice, and to accept her fate, making seeking justice not only emotionally jarring and anxiety-inducing but also socially unacceptable<sup>50</sup>.

As stated in the most recent US State Department report, even though, by law, women in Pakistan are free to marry without their family's approval, these women end up being marginalized from the rest of society, while being at risk of becoming victims of honor crimes<sup>51</sup>. In particular, according to numerous sources, people who have decided to defy their family and enter into a "love marriage", i.e. to choose their partner themselves, have been subjected to a great deal of pressure, threats, and violence from their families<sup>52</sup>. According to the National Commission on the Status of Women (NCSW), there continue to be cases of families making complaints against men, accusing them of abducting the woman they married, even when the woman married off her own free will, to end the relationship that they disapprove of. As reported by the Human Rights Commission of Pakistan, women who chose or attempted to choose their partner suffered various forms of abuse, such as imprisonment, physical violence, or even lethal violence by their parents and siblings.

The most extreme form of reaction and harm from these individuals is honor crimes. According to statistics, in 2016, 527 women were murdered by their relatives for "honor" reasons. Of these people, 173 were murdered because they chose the person they would marry. It is worth noting here the most recent incident which took place on 17th October 2021 in Muzaffargah city of Punjab province where a father set fire and burnt his children and grandchildren alive as his daughters were married without his consent<sup>53</sup>.

It is worth mentioning that since 1860, forced marriage is forbidden by Pakistani law (Penal Code, Chapter XX-A, Offenses against Women). In 1929, the Child Marriage Restraint

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<sup>50</sup> Khan, A., & Zaman, S. (2011). *The Criminal Justice and Rape in Pakistan: An Attitudinal Study of the Public Sector's Response to Rape in Karachi*.

<sup>51</sup> Inter Press Service (2021), *Why Pakistani Women Feel Unsafe in Public Spaces*, available: [http://www.ipsnews.net/2021/10/pakistani-women-feel-unsafepublicspaces/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=pakistani-women-feel-unsafe-public-spaces](http://www.ipsnews.net/2021/10/pakistani-women-feel-unsafepublicspaces/?utm_source=rss&utm_medium=rss&utm_campaign=pakistani-women-feel-unsafe-public-spaces)

<sup>52</sup> UK Home Office, op. cit p. 26

<sup>53</sup> EfSyn, (2021) *Horror in Pakistan. He burned alive his daughters*, available: <https://www.efsyn.gr/kosmos/asia/eirinikos/315065-friki-sto-pakistan-ekapse-zontanes-tis-kores-kai-ta-eggonia-toy>

Act was adopted by the Pakistan Government in an effort to provide more clarity on the prohibition of forced marriage. Unfortunately, in practice, the results were very different because the Council of Islamic Ideology condemned the aforementioned Act as anti-Islamic<sup>54</sup>. In 1990, Pakistan ratified the UN Convention on the Rights of Child, which prohibits child marriage.

Some customary practices in Pakistan have become increasingly sinister in terms of repercussions for women and impunity over time. For instance, the practice of *swara* or compensation marriage used to involve a woman from the household who had killed a member of another family. The woman was dressed up in black clothes and visited the victim's family as a gesture of apology. Usually, the family would accept the apology and the woman would be sent back, sometimes with gifts to the offended family. Over time, and because of the unequal role of the woman in Pakistan the practice of *swara* has changed dramatically and women are given away to settle the dispute of the deceased's family<sup>55</sup>. Exchanging women is another famous practice in Pakistan and the bride does not have the right to express her opinion because she is seen as the owner of her household and she is expected to be "a good girl" obeying the male's will.

According to the UN Committee on the Elimination of Discrimination against Women, forced and child marriages still take place in Pakistan<sup>56</sup>. Specifically, federal law sets the legal age for marriage at 18 for men and 16 for women, while according to UNICEF data, 21% of girls in Pakistan are already married by the time they turn 18. However, the Council of Islamic Ideology has called child marriage laws unfair and anti-Islamic, arguing that no legal age limit can be set as Islam does not prohibit child marriage once both individuals have reached puberty<sup>57</sup>.

## **2.5 Forced marriage in Somalia**

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<sup>54</sup> International Dalit Solidarity Network. (2022) *Child, Early and Enforced Marriages - Conversions and Forced Marriages in Pakistan*. p.3.

<sup>55</sup> Zaman, S., (2011). *Forced Marriages and Inheritance Deprivation in Pakistan*. Gender Based Violence Policy Research, & Capacity Building Programme. p.5

<sup>56</sup> United Nations (1981) *Convention on the Elimination of All Forms of Discrimination against Women*, p. 14

<sup>57</sup> Alison M. ect (2015). *Child, Early and Forced Marriage Resource Guide*. United States Agency for International Development p. 54



In the Islamic worldview, marriage is important to create healthy relationships, families, and societies. For a marriage to be valid it needs to meet some specific criteria, and one of them is the free and full consent of both spouses. Although there are many differences between regions, due to the diversity of customs, Islam accepts this diversity as long as the practices involved do not cause harm or are opposite to Islamic law. Despite all this, in Somalia forced marriage is a very common practice.

To begin with, it should be mentioned that the law requires both marriage partners to have reached the "age of maturity" and defines a child as a person under the age of 18, but does not explicitly prohibit child marriage. It is noted that marriage requires the free consent of both the man and the woman to be legal. However, early marriages are common. UNICEF estimated in 2006 that 45% of women were married before the age of 18 and 9% before the age of 15. The 2020 Governmental Health and Demographic Survey, supported by UNFPA, found out that over 62% of married women and 74% of unmarried women aged 15-49 reported that they perceived forced marriage as a form of domestic violence. In areas under its control, *al-Shabaab* arranged forced marriages between soldiers and young girls and used the lure of marriage as a recruitment tool for its soldiers. There have been no known efforts by the government or regional authorities to prevent child, early and forced marriage.

Moreover, it is very common that the family will decide on the husband for their daughters having as a result that young women are given away without their consent. Furthermore, the custom of "*inherit*" marriage is very common in Somalia. This means that when the husband dies, his brother will marry his wife without asking her or a man has the right to "*inherit*" the former wife of his deceased brother or another close relative and marry his dead wife's sister<sup>58</sup>. If a woman refuses an "*inherit*" marriage she may be denied the right to have custody of her child and also to manage the property of her deceased husband<sup>59</sup>. It is also very common that women who have been raped are forced to marry their rapist so they can "*clean*" the name of the family and the rapist will avoid punishment in this way.

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<sup>58</sup> Immigration and Refugee Board of Canada, (2014) *Somalia: Prevalence of forced or arranged marriages in Somalia; consequences for a young woman who refuses to participate in a forced or arranged marriage*, Available at <http://www.refworld.org/docid/47ce6d7a2b.html>, Accessed: 18 September 2022

Women who refuse to marry their rapists are facing severe consequences from their family and their clan which is disastrous for them<sup>60</sup>.

As an interviewed woman in Somalia declared, *“Our clans’ men have kept our society in the dark for a long time; we lag behind other Muslim nations. Our clans’ men, some of whom are educated, should have brought light, ended forced marriages and welcomed the beginning of a new era of respect for women in society. It’s regrettable that although they know how repressive such norms are, most use them to enhance their dominance and control over uneducated women<sup>61”</sup>*

Domestic and sexual violence against women remains a serious problem despite laws prohibiting all forms of violence against women. While both Sharia and customary law deal with the resolution of family disputes, women are not included in the decision-making process. Exposure to domestic violence also increased significantly in the context of displacement and socioeconomic impoverishment. Survivors faced significant challenges in accessing necessary services, including health care, psychosocial support, and justice and legal aid. They also faced reputational damage and ostracism from their communities. In several cases, survivors and service providers for survivors of gender-based violence were directly threatened by the authorities when such abuses were perpetrated by men in uniform<sup>62</sup>.

Somalia’s legal system is an amalgamation of Italian civil law and British common Law having little protection for women’s rights. Specifically, according to Human Rights Watch<sup>63</sup> there is no protection against domestic violence as Somalia’s Family Law of 1975 declares that the minimum age of marriage for both men and women is 18 years, or 16 for women if their guardian consents. But, as it has already been mentioned these provisions do not have implementation because the majority of young girls have been forced to marry as minors.

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<sup>60</sup> Eastern African Sub-Regional Support Initiative For The Advancement Of Women, nd. *Somalia*, available at <http://www.eassi.org/somalia>, Accessed: 18 September 2022

<sup>61</sup> Expanding Justice in Somalia, (2021). *Case Studies On Forced Marriage in Somalia*. [ebook], p.17. Available at: <https://www.eajprogram.org/scholarships/Publication8.pdf> [Accessed 18 September 2022].

<sup>62</sup> US Department of State, (2020) *Country Reports on Human Rights Practices: Somalia*. available in: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/somalia/>

<sup>63</sup> Human Rights Watch, (2017). *Forced Marriage during Conflict and Mass Atrocity*. In *the Oxford Handbook of Gender and Conflict* (p. 240).

Many Somalians are following sharia law, which allows girls to be married once they reach puberty.

### **Chapter 3**

#### **Forced Marriage in International and European Law**

As it has already been mentioned, forced marriage is a harmful practice violating human dignity and it is characterized as an attempt against fundamental rights such as freedom and equality. Moreover, forced marriage is a crime condemned by International and European human rights law. In this part, we will examine the legal framework concerning the phenomenon of forced marriage in International and European treaties, to critically review the obligations of the States regarding forced marriage. Moreover, we will study some very interesting case laws from national Courts and the ECHR, which will explain the diversity that we meet in every European Member State regarding the legislation and the practices that are followed.

#### **3.1 International Treaties**

##### **a) The right to marry with complete and free will**

In 1948 the Universal Declaration on Human Rights (UDHR) in article 16 stated that” 1. *Men and women, starting from the age of consent, have the right, without restriction on grounds of race, nationality, or religion, to marry and found a family, and enjoy equal rights in marriage, during marriage, and in marriage as well as in case of dissolution of the marriage.* 2. *Only through free and full consent of the future spouses can the marriage be contracted.* 3. *The family is the natural and fundamental element of society and is entitled to the protection of society and the State*<sup>64</sup>.”

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages in 1962 in articles 1,2 and 3 states that a wedding cannot take place unless both parties give their free and full consent publicly before the authority to codify the marriage. Moreover, in article 2 it is stated that the State shall ensure the minimum age for marriage for both men and women<sup>65</sup>.

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<sup>64</sup> *Universal Declaration on Human Rights*. (1948). United Nations

<sup>65</sup> *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (1962). General Assembly resolution 1763 A (XVII)

The Recommendation regarding consent for marriage, the minimal age to marry and the registration of marriages signed in 1965 by the United Nations<sup>66</sup>, highlights the importance of full consent before marriage and the minimum age for it. The first principle of the Recommendation predicts that “a) *Marriage cannot be legally contracted without the full and free consent of both parties, expressed by them in person, after due publicity, before the competent authority to formalize the marriage, and witnesses, in accordance with the law. b) Only when the competent authorities are satisfied that each of the parties has expressed their full and free consent before a competent authority, in the presence of witnesses and in the manner prescribed by law, there shall be granted permission to marry on the basis of power, without having subsequently withdrawn it*”.

The same predictions we meet in the International Covenant on Civil and Political Rights (articles 23.3, 23.3, 24.4)<sup>67</sup> and the International Covenant on Economic, Social and Cultural Rights (article 11)<sup>68</sup>. Last but not least, it is important to mention the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)<sup>69</sup> with which the United Nations recognized that forced marriage must be seen as a form of slavery.

#### **b) The right to a life free from gender violence**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the United Nations to eliminate discrimination against women in all member states. CEDAW explicitly refers at the article 16 that “*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: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and*

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<sup>66</sup> *Resolution 2018 (XX)*, from the 1st of November of 1965.

<sup>67</sup>*International Covenant on Civil and Political Rights*. (1966). [online] Available at: <<https://www.ohchr.org/sites/default/files/ccpr.pdf>> [Accessed 10 July 2022].

<sup>68</sup>*International Covenant on Economic, Social and Cultural Rights* (1966). [online] Available at: <<https://www.ohchr.org/sites/default/files/cescr.pdf>> [Accessed 10 July 2022].

<sup>69</sup> *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*. (1956) [online] Available at: <<https://www.ohchr.org/sites/default/files/slaverytrade.pdf>> [Accessed 10 July 2022].

*responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation”.*

The aforementioned convention is considered the most important one concerning the elimination of discrimination against women. All States should ensure not only harmonize their legislation with the Convention but have to undertake all the appropriate measures that would forbid forced marriage. To this point, the Convention has provided the creation of special committees, which guarantee the enforcement of CEDAW. Moreover, General Recommendations were issued by the Committee to ensure the implementation of the Convention.

More specifically, General Recommendation No. 19 of the Committee on the elimination of Discrimination against Women<sup>70</sup> confirms that *“traditional attitudes according to which women are considered subordinate or attributed stereotyped functions, perpetuate the spread of practices that involve violence or coercion, such as mistreatment in the family, forced marriages or murder due to inadequate skills, attacks with acid and female circumcision. These prejudices and practices sometimes even justify violence against women as a form of protection or domination. The effect of such violence on their physical and mental integrity is to deprive them of the effective enjoyment, exercise and even knowledge of their human rights and fundamental freedom. While this observation emphasizes on real violence or threats of violence, its basic consequences contribute to keeping women subordinate, a low participation in politics and their lower level of education and training as well as employment opportunities.”*

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<sup>70</sup> General recommendation No. 19: Violence against women. (1992). [online] Available at: <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_3731\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf)> [Accessed 10 July 2022].

General Recommendation No. 21 of the Committee<sup>71</sup> provides a specific mention of marriage, declaring in article 16 that “*States shall take all appropriate measures to eliminate discrimination against women in all matters related to marriage and family relations and, in particular, shall ensure, on equal terms with men: a) The right to marry; b) The right to freely choose a spouse and to marry only by their free will and with their full consent.*”

The Declaration on the Elimination of Violence against Women (1993)<sup>72</sup> provides a clear image of violence against women and characterizes such acts as a violation of human rights and fundamental freedoms. Article 2 of the Convention cites that “*Violence against women shall be understood to encompass, but not be limited to, the following: ( a ) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation*”. Even though forced marriage is not explicitly mentioned in the definition of “violence against women”, it should be seen that this is included in the expression “other traditional practices harmful to women”.

At this point, it should be mentioned that child marriage is recognized as a form of forced marriage because children do not have the ability to provide their free and full consent when it comes to decide about such important issues, like marriage. Moreover, the meaning of being a child in the modern societies comes in contrast with the concept of marriage due to the fact that children must be protected to live their childhood. For this reason the Convention on the Rights of the Child in article 1 states that “*a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*”. Having in mind the above mentioned treaties about the minimum age of marriage, we can assume that child marriage is a harmful practice and member states shall take all appropriate measures to assure that the legal minimum age of marriage is eighteen years.

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<sup>71</sup> *General recommendation No. 21: Equality in marriage and family relations*. (1994). [online] Available at: <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/A\\_49\\_38\(SUPP\)\\_4733\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38(SUPP)_4733_E.pdf)> [Accessed 10 July 2022].

<sup>72</sup> *Declaration on the Elimination of Violence against Women*. (1993) [online] Available at: <<https://www.ohchr.org/sites/default/files/eliminationvaw.pdf>> [Accessed 10 July 2022].

Article 19 of the same Convention there states that “1. 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. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement”. Forced marriage is not exclusively mentioned but having in mind the above-mentioned treaties it should be included in all forms of physical or mental violence.

### **3.1.1. Reservations on the above-mentioned International Treaties**

As is already mentioned, Afghanistan, the Syrian Arab Republic, Pakistan, and Somalia are the top four countries that most refugees had fled, seeking asylum in Greece. For this reason, it is worth seeing the ratification and the reservations that these countries have signed, concerning forced marriages. To begin with, Afghanistan, the Syrian Arab Republic and Pakistan have ratified the UDHR, with Afghanistan expressing no reservations. Syrian Arab Republic has ratified the Convention with reservation on article 16<sup>73</sup> and Pakistan made a general Declaration about the Provisions of the Constitution of the Islamic Republic of Pakistan<sup>74</sup>. We notice that both countries put a great emphasis on Sharia law and actually keep the right not to implement the provisions of the treaty if there are opposite to Sharia, which effects dramatically the right to marry with free and full consent. Somalia did not ratify at all UDHR.

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<sup>73</sup> Reservation: “article 16, paragraph 1 (c), (d), (f) and (g), concerning equal rights and responsibilities during marriage and at its dissolution with regard to guardianship, the right to choose a family name, maintenance and adoption; article 16, paragraph 2, concerning the legal effect of the betrothal and the marriage of a child, inasmuch as this provision is incompatible with the provisions of the Islamic Shariah; and article 29, paragraph 1, concerning arbitration between States in the event of a dispute”

<sup>74</sup> Declaration “the accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan”

About the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages none of these countries ratified the convention. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery has been ratified by all these countries with no reservations. CEDAW has been ratified by Afghanistan with no reservation and has not been ratified by Somalia. The Syrian Arab Republic<sup>75</sup> and Pakistan have ratified the Convention again with the same reservations about the Sharia implementation. Finally, yet importantly, the Convention on the Rights of the Child has been ratified by all these countries but with specific Reservations concerning again the implementation of the Sharia Law<sup>76</sup>.

It is clear that all these international treaties that create a pledge of protection for women and girls on forced marriage are not actually being implemented in many countries, having as a result the violation of their basic human rights, such as the right to marriage. The Islamic law puts pressure on societies and forward inequalities between women and men. This is the reason why a great effort has to take place in order to educate not only women but also men about the important consequences that forced marriages have in many aspects of women's lives.

### **c) The right to sexual and reproductive health**

Forced marriage violates another basic human right except the right to marry with complete and free will the right to a life free from gender violence, which is the right to sexual and reproductive health. The Committee on Economic Social and Cultural Rights (CESCR)

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<sup>75</sup> Reservation on "article 16, paragraph 1 (c), (d), (f) and (g), concerning equal rights and responsibilities during marriage and at its dissolution with regard to guardianship, the right to choose a family name, maintenance and adoption; article 16, paragraph 2, concerning the legal effect of the betrothal and the marriage of a child, inasmuch as this provision is incompatible with the provisions of the Islamic Shariah; and article 29, paragraph 1, concerning arbitration between States in the event of a dispute

<sup>76</sup> Afghanistan "The Government of the Republic of Afghanistan reserves the right to express, upon ratifying the Convention, reservations on all provisions of the Convention that are incompatible with the laws of Islamic Shari'a and the local legislation in effect"

Pakistan "Provisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values"

Syrian Arab Republic "The Syrian Arab Republic has reservations on the Convention's provisions which are not in conformity with the Syrian Arab legislations and with the Islamic Shariah's principles, in particular the content of article 14 related to the Right of the Child to the freedom of religion"

Somalia "The Federal Republic of Somalia does not consider itself bound by Articles 14, 20, 21 of the above stated Convention and any other provisions of the Convention contrary to the General Principles of Islamic Sharia"



and the Committee on the Elimination of Discrimination against Women (CEDAW) have both indicated that women's right to health includes their sexual and reproductive health. Forced marriage, which includes early marriage, is one of the examples of violation of the right to sexual and reproductive health along with forced sterilization, forced virginity examinations etc<sup>77</sup>.

The United Nations in the 1994 International Conference on Population and Development (ICPD) explains: "*reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence*"<sup>78</sup>.

The right to sexual and reproductive health is protected in a plethora of international treaties, such as CEDAW which in article 10 specifies that women's right to education includes "*access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning*" and article 16 guarantees women equal rights in deciding "*freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.*" Moreover, the Beijing Platform for Action states that "*the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence*" and the General Recommendation 24 of the CEDAW's Common recommends that States prioritise the "*prevention of unwanted pregnancy through family planning and sex education*".

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<sup>77</sup> United Nations. (nd). *Sexual and Reproductive Health and Rights*. Human Rights Office of High Commissioner. [online] Available at: < <https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights>> [Accessed 8 February 2023].

<sup>78</sup> United Nations. (1994). *International Conference on Population and Development (ICPD)*. Point 7.3. [online] Available at: < <https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights>>

Women who are forcibly married do not have the choice to decide whether or not they want to give birth because in patriarchal societies they have to prove immediately their fertility<sup>79</sup>. As a consequence, women can not negotiate their sexual life or they are too immature to give their free consent for sexual actions. This leads that young girls and women are rapped during the wedding and may face an unwanted pregnancy. Forced sexual interference inside a wedding is not considered rape in many societies and especially when we are discussing third counties of Asia and Sub-Saharan Africa where women are seen only as a reproductive machine. This attitude has many consequences on women's mental health as is analysed in previous chapters.

### **3.2. The instruments of the European Union**

Concerning European Union, we can observe that there are plenty of treaties and instruments, which forbid forced marriage and promote equality between men and women. In article 23 of the Charter of Fundamental Rights of the European Union<sup>80</sup> the right to non-discrimination based on sex is enshrined having, as a result, the creation of the European Union Guidelines on violence against women and girls and combating all forms of discrimination against them<sup>81</sup>. In Annex, 1, p. 14, forced marriage is mentioned explicitly as a form of violence against women perpetrated by the state. Specifically, we can read that *“Violence against women and girls includes, but is not restricted to, forms of physical, sexual and psychological violence (a) occurring within the family (including prenatal selection based on the sex of the fetus (except where medically necessary) and systematic neglect of infant girls; forced marriage; early marriage [...] (c) violence against women and girls covers all the acts listed above whether or not perpetrated or condoned by the State”*.

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<sup>79</sup> Girls not Brides. (nd). Adolescent pregnancy and child marriage. [online] Available at: <<https://www.girlsnotbrides.org/learning-resources/child-marriage-and-health/adolescent-pregnancy-and-child-marriage/>> [Accessed 8 February 2023].

<sup>80</sup> Charter of fundamental rights of the European Union. 2012/C 326/02. (2012) [online] Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>> [Accessed 16 July 2022].

<sup>81</sup> EU guidelines on violence against women and girls and combating all forms of discrimination against them. (2018). [online] p.14. Available at: <[https://www.eeas.europa.eu/sites/default/files/03\\_hr\\_guidelines\\_discrimination\\_en\\_0.pdf](https://www.eeas.europa.eu/sites/default/files/03_hr_guidelines_discrimination_en_0.pdf)> [Accessed 17 July 2022].

The 2011/36/EU Directive of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims<sup>82</sup>, recognizes forced marriage as a form of human trafficking and puts the minimum standards to prevent and combat this phenomenon and also to assist the victims. The 2012/29/EU Directive<sup>83</sup> establishing minimum standards on the rights, support, and protection of victims of crime, includes forced marriage as a form of gender violence and recognizes that victims need special protection due to the high risk of secondary victimization. Moreover, it recognizes special protection for “*victims of human trafficking, slavery and different forms of harmful practices, such as forced marriage*”. It should be mentioned that the Directive of Recognition<sup>84</sup> in article 9 details persecution for gender reasons. Even though forced marriage is not explicitly mentioned, it is clear that it is a reason for persecution to receive asylum status. Finally, the Directive on the right to family reunification<sup>85</sup>, which permits third-country nationals residing in a European Union Member State to be reunified with their families, carries specific provisions to prevent forced marriage.

### **3.3. The instruments of the Council of Europe**

The Council of Europe has made an effort to stop forced marriages and make victims aware of their rights. Starting in 2002, Recommendation No.5 on the protection of women against violence<sup>86</sup> includes forced marriage as a form of violence against women based on gender and encourages the Member States to review their legislation and policies to ensure women’s rights and prevent such harmful practices. Moreover, in 2005 Resolution 1468

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<sup>82</sup> Directive 2011/36/EU. *On preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.*(2011) [online] Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036&from=en>> [Accessed 17 July 2022].

<sup>83</sup> Directive 2012/29/EU (2012). *Establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.* [online] Available at: <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=O:L:2012:315:0057:0073:EN:PDF>> [Accessed 17 July 2022].

<sup>84</sup> Directive 2011/95/EU. (2011), *On standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.* [online] Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&from=EN>> [Accessed 17 July 2022].

<sup>85</sup> Council Directive 2003/86/EC. (2003). *On the right to family reunification.* [online] Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0086&from=EL>> [Accessed 17 July 2022].

<sup>86</sup> Recommendation No. 5, (2002). *On the protection of women against violence.* [online] Available at: <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805e2612](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2612)> [Accessed 17 July 2022].

from the Parliamentary Assembly of the Council of Europe on Forced Marriages and Child Marriages<sup>87</sup> defined forced marriage as “*the union of two individuals in which at least one of them has not given their free and full consent to marry*”.

In 2005 the Parliamentary Assembly of the Council of Europe encouraged the Member States to define the age of eighteen as the permissible age for marrying in both women and men and to keep records of marriages, analyzing forced marriage to create strategies against this phenomenon. As Briones Martínez highlights in his report in 2009, “*This report highlights the importance of the Resolution of the General Assembly of the United Nations 843 (IX), of 1954, which declares certain customs, old laws and practices regarding marriage and family incompatible with the principles recognized in the Charter of the United Nations and the Universal Declaration of Human Rights, considering that such marriages should not take place in a society like ours where human rights and the rights of the child are protected. That is why the Parliamentary Assembly of the Council of Europe agrees on this point with the considerations approved in the United Nations Convention on consent to marry, the minimum age, and marriage registration of the year 1962*”<sup>88</sup>.

The Parliamentary Assembly issued in 2009 Resolution 1681 concerning the crimes of honor<sup>89</sup>, which is a practice taking place in Europe in places where migrants, from countries where it is regarded as a family tradition, settle. The Resolution was issued after the draft Resolution issued by the Committee on Equal Opportunities for Women and Men on the need to combat this practice, which is an extreme violation of women’s rights, based on gender inequalities.

### **3.4. The Istanbul Convention**

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<sup>87</sup> Parliamentary Assembly (2005). *Resolution 1468. Forced marriages and child marriages*. [online] Available at: <<http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17380&lang=en>> [Accessed 17 July 2022].

<sup>88</sup> Briones Martínez and others (2009). *Forced marriages in Europe: a form of gender-based violence and violation of human rights*. pp. 1-40 [online] Available at: <<https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/5474/4771>> [Accessed 17 July 2022].

<sup>89</sup> Parliamentary Assembly. (2009). *Urgent need to combat so-called “honour crimes”*. [online] Available at: <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17766&lang=en>> [Accessed 17 July 2022].

The most important and binding instrument of the European Union against the battle of forced marriage is the Convention on preventing and combating violence against women and domestic violence<sup>90</sup>, or the Istanbul Convention, which was signed in 2011 and is the newest international treaty on various forms of violence against women. Article 3.a mentions that economic damage is a form of violence against women, stating that “*All acts of violence based on gender that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*”. It is the first time that an international convention refers to “women” as a definition including girls under the age of eighteen, as stated in article 3f.

In the Istanbul Convention, there is a specific mention of forced marriage and “*Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without financial or administrative burden placed on the victim*” (article 32). Furthermore, The “*Parties shall adopt legislative or other measures necessary for victims of forced marriages taken to another country for the purpose of celebrating said marriage, and who lose, as a result, their resident status in the country in which they habitually reside, to recover this statute*”.

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

### **3.5. Legislation concerning forced marriage in the European States**

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<sup>90</sup> Council of Europe, (2011). *Convention on preventing and combating violence against women and domestic violence*. [online] Available at: <<https://rm.coe.int/168008482e>> [Accessed 17 July 2022].

As is already observed, there is a plethora of international and European treaties concerning the phenomenon of forced marriage. However, in the European Union, we notice that there is not a common approach against forced marriage, whilst States have to follow the provisions of treaties that they have ratified.

Specifically, article 37 of the Istanbul Convention demands the criminalization of the intentional act to force someone to be married, and “1. Parties shall adopt the legislative or other measures necessary to criminalize the act, when committed intentionally, to compel an adult or a minor to marry. 2. Parties shall adopt the legislative or other measures necessary to criminalize the act, when committed intentionally, of deceiving an adult or minor to take a such individual to the territory of a State other than the one in which the person resides to force said person to marry”.

Moreover, the European Parliament in a 2006 Resolution called all European Members to introduce in their legislation measures to prosecute anyone who would attempt to organize a forced marriage, including cases when the marriage is organized outside of their territory (Point 33). At the same time, the Members should ensure that effective penalties will apply under their criminal codes to all forms of gender-based violence and especially forced marriages<sup>91</sup>.

Unfortunately, until nowadays there is not a common European approach or legislation that could offer a solid base for the elimination of forced marriage. An example of this heterogeneity among the Member States is that forced marriage is criminalized in some countries. According to section 237 of the German criminal code, if someone forces somebody to marry, the perpetrator will be punished with a penalty of imprisonment between 6 months to 5 years. In paragraph 2 of the same article is noted that it is also a crime when someone coerces a person to marry abroad or prevents this person from returning to Germany<sup>92</sup>.

In the United Kingdom in section 121 of the Act for England and Wales and Section 122 for Scotland, forced marriage is punished with imprisonment to a maximum of 7 years. In

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<sup>91</sup> European Parliament, *Resolution on women's immigration the role and place of immigrant women in the European Union*, 2006/2010(INI).

<sup>92</sup> Germany, German Criminal Code (Strafgesetzbuch, StGB), Art. 237, [www.gesetze-im-internet.de/stgb/\\_237.html](http://www.gesetze-im-internet.de/stgb/_237.html).

addition, under the Anti-social Behavior, Crime and Policing Act it is a punishable offense to deceive someone to leave the UK to get married. A very important legislative measure that the UK has passed through the Forced Marriage Act 2007 is that the courts in England and Wales have the power to issue “forced marriage protection orders” to protect the potential victims<sup>93</sup>.

A very good example to understand deeper how this Act works is the case of *WU v BU & Ors* (EWCOP 54). In this case, BU was a 70 years old woman with tremendous property, who fall in love with NC around 2016. After their relationship, BU moved away from her close family, changed her will and WU moved to her house while he received cash from BU, estimated at £80.000. In May 2020, BU’s daughter has brought court proceedings due to concerns that this relationship was based on coercive control, particularly about BU’S financial affairs. In September 2021, the Court ordered a continuation of an injunction preventing NC from having contact with BU and a Forced Marriage Protection order to prevent any marriage from taking place. The judge issued this decision to protect BU from getting married under force or coercion from NC because it was clear from the evidence that BU could not give her full and free consent for the wedding<sup>94</sup>.

Some other states that have also criminalized forced marriage as a separate criminal offense are Austria<sup>95</sup>, Belgium<sup>96</sup>, Bulgaria<sup>97</sup>, Croatia<sup>98</sup>, Cyprus<sup>99</sup>, Denmark<sup>100</sup>, Spain<sup>101</sup>, Luxembourg<sup>102</sup>, Malta<sup>103</sup>, Portugal<sup>104</sup> Slovenia<sup>105</sup>, and Sweden<sup>106</sup>. In other European states, forced marriage may be punishable under other crimes such as rape, sexual violence, bodily harm, etc. For instance, in France, the French Violence against Women Act envisages that

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<sup>93</sup> United Kingdom, Parliament (2007)

<sup>94</sup> Andrew Bishop (2022) *Recent case highlights need for law reform in forced/predatory marriage*, Family Law Lexis Nexis. Available at: [https://www.familylaw.co.uk/news\\_and\\_comment/recent-case-highlights-need-for-law-reform-in-forced-predatory-marriage](https://www.familylaw.co.uk/news_and_comment/recent-case-highlights-need-for-law-reform-in-forced-predatory-marriage).

<sup>95</sup> Article 106a Criminal Code of Austria.

<sup>96</sup> Article 391 Criminal Code of Belgium.

<sup>97</sup> Article 177 Criminal Code of Bulgaria

<sup>98</sup> Article 169 Criminal Code of Croatia.

<sup>99</sup> Chapter 154 Criminal Code of Cyprus.

<sup>100</sup> Section 260 Criminal Code of Denmark.

<sup>101</sup> Organic Law 10/1995

<sup>102</sup> Article 387 Criminal Code of Luxembourg.

<sup>103</sup> Article 251G Criminal Code of Malta.

<sup>104</sup> Article 254-B Criminal Code of Portugal

<sup>105</sup> Article 132.a Criminal Code of Slovenia.

<sup>106</sup> Chapter 4 Criminal Code of Sweden

penalties for violence, torture, or barbaric acts or murder are increased where the committed offense is to force a person to marry<sup>107</sup>. In the Netherlands from 1 July 2013, forced marriage is considered a severe form of coercion for which the maximum sentence increases from nine months to two years in prison<sup>108</sup>.

To conclude the best way to fight against forced marriage, data should be examined at the European level. In the United Kingdom, the Forced Marriage Unit releases every year statistics on the cases that have been handled showing that since 2012 every year they are dealing with 1200 to 1400 cases of forced marriage. In Germany, a survey took place in 2008 and the results showed that until that year more than 3.000 women and girls asked for help with forced marriage, at the age younger than 21 years old. In Italy, the investigation that was conducted in Emilia- Romagna region in 2009 found 33 cases in this area and all the victims were foreigners. In France, a study indicated a higher proportion of forced marriage among older refugee women than among younger ones. In Spain, although forced marriage is included in the Penal Code as a separate crime, the State did not conduct any assessment of the phenomenon. Only in 2017, a survey took place among 150 entities working with women survivors of gender-based violence showed that 62 of them had been victims of forced marriage with 77% being younger than 21 years old<sup>109</sup>.

In 2015, the Court of Appeal in England issued an important decision in a case where there was a conflict between the need to protect a person under article 3 of ECHR and the right to freedom from inhuman and degrading treatment. More specifically, the case was about an adult woman for whom her family has issued a Forced Marriage Protection Order (FMPO) and her passport has been kept in the fear that she would be taken to Pakistan for the purpose of forced marriage. The woman appealed the FMPO on the grounds that she was not at risk of forced marriage and she was facing coercive control by her family. The Court of Appeal examined the case and issued guidelines for the FMPO having in mind that FMPOs

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<sup>107</sup>France, Violence against Women Act, Art. 1. Available at [www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=FDBA3C30EB891E30384ECFAB1170CEEC.tpdjo13v\\_1?idArticle=JORFARTI00022454036&cidTexte=JORFTEXT000022454032&dateTexte=29990101&categorieLien=id](http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=FDBA3C30EB891E30384ECFAB1170CEEC.tpdjo13v_1?idArticle=JORFARTI00022454036&cidTexte=JORFTEXT000022454032&dateTexte=29990101&categorieLien=id).

<sup>108</sup> The Netherlands, Penal Code, Section 284

<sup>109</sup> FM Out (2021). Finding Ways out to forced marriages. Training Material. Available at: [https://www.fmout.eu/wp-content/training-materials/Training\\_materials.pdf](https://www.fmout.eu/wp-content/training-materials/Training_materials.pdf)



are very important to prevent forced marriage but the autonomy of the individual should also be respected and not violated<sup>110</sup>.

As we can see, there is a big effort globally and in the European Union to combat forced marriage. Wonderful treaties create a pledge of protection and offer many tools to empower and inform women and young girls about their rights and the consequences of such actions. Unfortunately, the global data about forced marriage is quite disappointing having in mind that in 2021, 22 million people were forced to marry on any given day, and women make up 14.9 million of this number<sup>111</sup>. All the above shows that there are many things to be done to implement international treaties that states have ratified to prevent and avoid forced marriages.

Finally, yet importantly, we observe that there is a trend toward the criminalization of forced marriage, but we should mention that there are advantages and disadvantages to this option. If forced marriage is criminalized as a separate crime, it means it would be punishable separately, and penalties could be continual with another committed crime. Punishing forced marriage as a separate crime could be a strong message that this practice is illegal and there is no tolerance for it. On the other hand, the criminalization of forced marriage as a separate crime could lead to opposite results. It is uncertain how the Courts could define the meaning of “force”, especially when it comes to traditions that no physical or psychological abuse is imposed. It is more uncertain if victims would ask for help because they would have the fear of persecution against their own family, and/or because the persecution would fail. All the above will be discussed in the last part of this thesis in our effort to find the best way to battle against forced marriages.

## **Chapter 4**

### **Case Law on forced marriage**

#### **4.1 Forced Marriage as a reason for granting international protection**

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<sup>110</sup> Southall Black Sisters (2020). Court of Appeal Judgment Delivers Critical Guidance in Forced Marriage Cases. Available at: <https://southallblacksisters.org.uk/press-release/forced-marriage-protection-order/>, [accessed 18/12/2022]

<sup>111</sup> International Labour Organization and others. (2022) *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. p.59

Following the above-mentioned provision about how forced marriage should be examined in the light of asylum procedures, it is worthy to have a deeper look at case law from European States to understand how these claims are examined by each state. To avoid repetition, we should remember that according to article 60.1 of the Istanbul Convention, asylum claims based on forced marriage, should be accepted and the applicants should acquire refugee status. Unfortunately, this is not always the case, as we will notice in the upcoming cases. Some states deny the first level to grant asylum in cases where the applicant is a victim of forced marriage or is in danger to become a victim in case of a return to the country of origin. For this reason, the appeals authority has annulled the decisions and finally granted asylum to victims or potential victims of forced marriage. It is very important for all the refugee women who arrive in Greece to feel safe to express themselves about the phenomenon of forced marriage and their fear of returning to their country of origin. The State must respect this fear and examine the asylum request in the light of art. 1 A (2) of the Geneva Convention 1951.

**4.1.1. Belgium - Council for Alien Law Litigation, X. v. Commissioner-General for Refugees and Stateless Persons, n° 222 826<sup>112</sup>**

In this case, brought before the Federal Administrative Court, a Guinean young woman had asked for asylum because she was forced to be married and after her husband's death, her brother-in-law had demanded to marry her. Specifically, the woman was married in 2010, at the age of sixteen to a man older than fifty years old in Guinea, who died in 2015. After his death, his brother forced the young woman to marry him, a very common practice in Guinea, known as "levirate", but she first refused. Her sister-in-law informed her later that she would have to subject her daughter to female genital mutilation (FGM), so the woman decided to leave the country and seek asylum in Belgium.

Her case was first rejected by the Assistant Commissioner for Refugees and Stateless Persons because the applicant had presented inconsistent and contradictory information about her identification documents and visa. The applicant was forced to present this

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<sup>112</sup>European Database of Asylum Law. (2019). *Belgian Council for Alien Law Litigation., n°222 826*, available at: [file:///C:/Users/THP301/Downloads/European%20Database%20of%20Asylum%20Law%20-%20Belgium%20%E2%80%93%20Brussels%20Labour%20Tribunal,%2013%20December%202017,%2017\\_5651\\_A%20-%202018-05-24.pdf](file:///C:/Users/THP301/Downloads/European%20Database%20of%20Asylum%20Law%20-%20Belgium%20%E2%80%93%20Brussels%20Labour%20Tribunal,%2013%20December%202017,%2017_5651_A%20-%202018-05-24.pdf)

information because the smugglers had prepared the false document for her, so she did not have other choices. After the first rejection, the applicant appealed the decision before the Federal Administrative Court (FAC).

The young woman referred to her fear of being forced to be married to her brother-in-law and also the fear of her daughter and the practice of FMG. The Court decided that even the first wedding between the applicant and her husband was forced because the age difference was more than forty years. About the “levirate”, it was found a grounded fear that in case of return to Guinea, the applicant would be forced again into marriage with her brother-in-law, so non-state actors would persecute her. Finally, the FAC examined if the Guinean State could offer protection from the harmful practice of forced marriage, which violates fundamental human rights. From the available information, the Court concluded that forced marriages are very common in Guinea, so the applicant had to be granted refugee status under art. 1 A (2) of the Geneva Convention 1951, because she risked being persecuted by non-state agents because of belonging to the social group of women.

#### **4.1.2. Denmark - the Refugee Appeals Board’s decision of 16 January 2017<sup>113</sup>**

The applicant, a young Afghani woman, asked for asylum in Denmark on the grounds that she has a well-founded fear for her life because she had fled from a forced marriage. More specifically, the applicant was born in 1990 in Afghanistan and was married to a man from her village. In 2012, her husband was murdered and the applicant assumes that the killer was the brother of her husband’s father because he wanted to receive his inheritance. This man was also a chairperson of the council of elders and when the applicant’s husband was murdered, he took her to his house, where he was mistreating her by rapping and abusing her. When his wife died, he wanted to marry the applicant without her will, but she departed from Afghanistan and asked for asylum in Denmark.

The Danish Immigration Service rejected her asylum application and the case was brought to the Refugee Appeals Board. The Board accepted the fear of the applicant that if

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<sup>113</sup> European Database of Asylum Law. (2017) *Denmark - the Refugee Appeals Board’s*. Available at: <file:///C:/Users/THP301/Downloads/European%20Database%20of%20Asylum%20Law%20-%20Denmark%20-%20the%20Refugee%20Appeals%20Board%E2%80%99s%20decision%20of%2016%20January%202017%20-%202017-11-08.pdf>

she returns to Afghanistan she will be forced to enter the marriage with the brother of her late husband's father having in mind that he is the chairperson of the council of elders and he could force his will on the council. The young woman was granted asylum under the Danish Act Art. 7 (1) because she, as a widow, was at risk of forced marriage and the state of Afghanistan could not offer protection. She belongs to the particular social group of widows in Afghanistan who are at risk of forced marriage.

#### **4.1.3. Denmark - The Refugee Appeals Board's decision of 27 June 2017<sup>114</sup>**

In this case, the applicant was a stateless Palestinian, born in Lebanon in 1976, who later acquired Jordanian citizenship after being married to a Jordanian citizen. She entered Denmark in July 2016 with her four daughters claiming that her life is in danger by her former spouse's business partner because her former husband had stolen money from his partner and told the partner that the applicant has advised him to steal the money. Moreover, the in-laws were pushing her oldest daughter, who was 17 years old, to drop out of school in order to marry her cousin. In October 2016, the asylum claim of the applicant was rejected and she appealed the decision to the Refugee Appeals Board.

The Board found that the eldest daughter was at risk of forced marriage and because she was mature enough to be heard, she should conduct a separate interview with the Danish Immigration Service, according to Article 12 of the Convention of the Rights of the Child. The Board assessed the age of the oldest daughter and remitted the case to the Danish Immigration Service to proceed with an interview with her, because she had reason to receive asylum status on the grounds of the upcoming forced marriage with her cousin, in the case that she will be sent back to Lebanon.

#### **4.1.4. Regional Asylum Office of Samos – Decision No. 72515/2022<sup>115</sup>**

In this case, the applicant was a Somali unaccompanied minor who entered Greece in December 2021 and submitted a claim for international protection on the island of Samos.

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<sup>114</sup> European Database of Asylum Law. (2017) *Denmark - the Refugee Appeals Board's decision on 27 June 2017*. Available at: file:///C:/Users/THP301/Downloads/European%20Database%20of%20Asylum%20Law%20-%20Denmark%20%20The%20Refugee%20Appeals%20Board%E2%80%99s%20decision%20of%2027%20June%202017%20-%202017-12-12.pdf

<sup>115</sup> Non Published

At her interview, which took place in the same month, the young woman declared that she was born in Mogadishu, the capital of Somalia, and her custody had been given to her uncle after the death of her parents. She had attended 8 years of school and later her uncle forbid her from going to school to do the chores in the house. Moreover, at the age of 5, she was submitted to female genital mutilation (FGM), which creates many problems for her until today. When she becomes 17 years old, her uncle forced her to marry an unknown man who was addicted to drugs and was abusing her daily. The applicant asked for help from a friend and left Somalia secretly.

She declared that she can not go back to Somalia because her former husband and her uncle will kill her. After all, she dishonored the name of the family. Moreover, the Somali state can not protect her due to the lack of appropriate shelters for abused women. Also, she said that her country accepts the phenomenon of forced marriage as a tradition and does not support the women who are subjected to this practice. The Regional Asylum Office of Samos granted asylum to the applicant because she belongs to a particular social group of young girls who are victims of FGM and forced marriage and the State cannot offer protection.

#### **4.2. Cases from International Criminal Court about forced marriage in armed conflicts**

It is well known that the phenomenon of forced marriage is on a high rise when it comes to armed conflicts. Women are considered trophies for the “winners” and are forced to marry soldiers. Moreover, economically broke families, are selling their daughters to rich men in order to survive and young girls are sent abroad to be married to save their lives. All these stories are much known in world history and the International Criminal Court has issued some very interesting decisions about forced marriages. As it is clear from the following examples, forced marriage is not always considered a crime against humanity, as it should be. Only in the case of the Sierra Leone civil war, the Prosecutor of the ICC issued a very interesting opinion about forced marriage, which unfortunately was not adopted in the upcoming cases.

To begin with, in 1990 conflict started in the Democratic Republic of Congo with different rebel groups fighting for power. The case came to the International Criminal Court to investigate crimes against humanity. The ICC prosecutor charged two former leaders that during an attack in a village called Bogoro, women were raped and taken to the camps as

“wives” of the soldiers<sup>116</sup>. The Prosecutor expressed himself on forced marriage saying: *“In the view of the Chamber, sexual slavery also encompasses situations where women and girls are forced into “marriage”, domestic servitude or other forced labor involving compulsory sexual activity, including rape, by their captors. Forms of sexual slavery can, for example, be “practices such as the detention of women in ‘rape camps’ or ‘comfort stations’, forced temporary ‘marriages’ to soldiers and other practices involving the treatment of women as chattel, and as such, violations of the peremptory norm prohibiting slavery<sup>117”</sup>. In this case, forced marriage was put under the umbrella of sexual slavery and did not considered a separate crime against humanity.*

In many other cases which were brought before the International Criminal Court, forced marriage was seen under the umbrella of sexual slavery. This is the story of the civil war in Cote D’Ivoire in 2002 and 2010 where armed conflict resulted in inhuman behavior against women by rapping and forcing them to marry the perpetrators as a trophy for their victory<sup>118</sup>. Also, the case of the Central African Republic in 2002-2003 where young girls were forced to marry with the armed *Convention des Patriotes pour la justice et la Paix en Centrafrique*,<sup>119</sup> and the case of the Republic of Mali in 2012 where rebels were threatening families to hand over their daughters as “wives” to the rebels<sup>120</sup>.

#### **4.3. The case of the Sierra Leone civil war**

It was only in the case of the civil war in Sierra Leone when the Prosecutor of the ICC expressed directly that *“acts of forced marriage were of similar gravity to several enumerated crimes against humanity including enslavement, imprisonment, torture, rape, sexual slavery*

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<sup>116</sup> Haenen, I. (2014). *Force & Marriage: The criminalisation of forced marriage in Dutch, English and international criminal law*.

<sup>117</sup> *Katanga and Ngudjolo Chui Decision on the confirmation of charges*, para. 431. The Pre-Trial Chamber cites from the report of the former Special Rapporteur on the issue of systematic rape, sexual slavery, and slavery-like practices in armed conflict, McDougall (UN Commission on Human Rights: Contemporary forms of slavery 1998, para. 8).

<sup>118</sup> No. ICC-02/11 *Pre-Trial Chamber III, Decision on the Prosecution’s provision of further information regarding potentially relevant crimes committed between 2002 and 2010* [online] Available at: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2012\\_03483.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2012_03483.PDF), [Accessed 24 July 2022]

<sup>119</sup> UN GA /SC, *Report of the Secretary-General on sexual violence in conflict*, UN Doc. A/67/792-S/2013/149, (2013), para. 21.

<sup>120</sup> UN GA /SC, *Report of the Secretary-General on sexual violence in conflict*, UN Doc. A/67/792-S/2013/149, (2013), para. 54.

and sexual violence<sup>121</sup>” and assimilated forced marriage as a separate crime against humanity.

In par. no. 199 of the decision we read that *“The Appeals Chamber finds that the evidence before the Trial Chamber established that victims of forced marriage endured physical injury by being subjected to repeated acts of rape and sexual violence, forced labor, corporal punishment, and deprivation of liberty. Many were psychologically traumatized by being forced to watch the killing or mutilation of close family members, before becoming “wives” to those who committed these atrocities and from being labeled rebel “wives” which resulted in them being ostracised from their communities. In cases where they became pregnant from the forced marriage, both they and their children suffered long-term social stigmatization”*.

The civil war in Sierra Leone started in 1991 and lasted at least ten years with rebel groups fighting to take the power from the government. Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC) were the main rebel forces, while the Civil Defense Forces (CDF) was created to battle against them. The civil war in Sierra Leone was characterized by brutal attacks on civilians from all parties. Sexual violence was endemic and especially young girls and adolescents were at the center of the attacks<sup>122</sup>.

Although Sierra Leone’s case opened the way to define forced marriage as a separate crime against humanity, the cases that came after that did not follow this proposition. It can be seen that International Humanitarian Law does not explicitly prohibit forced marriage but it is under the umbrella of sexual slavery. As it is already mentioned, the criminalization of forced marriage as a separate crime either in national laws or international laws has both positive and negative results. At the conclusion of this dissertation, we will discuss further recommendations, which could be helpful in the elimination of the phenomenon of forced marriage.

## Chapter 5

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<sup>121</sup> University of Minnesota, (2008) *Prosecutor v. Brima, Case No. SCSL-2004-16-A, Appeals Judgment*. par. 200 [online] Available at: <[http://hrlibrary.umn.edu/instree/SCSL/SCSL-04-16\\_Files/SCSL-04-16-A-675.htm](http://hrlibrary.umn.edu/instree/SCSL/SCSL-04-16_Files/SCSL-04-16-A-675.htm)> [Accessed 24 July 2022].

<sup>122</sup>UF Trial Judgement (2004) *Testimony to the Commission has revealed that all of the armed groups, particularly the RUF and the AFRC, perpetrated a deliberate policy of abducting pre-pubescent young girls and raping them, breaking all cultural taboos.*, p. 161

## **Forced marriage in the Greek Civil and Criminal Law**

Before we start examining the Greek Civil and Criminal law about forced marriage, we need to clarify that forced marriage is not explicitly forbidden and is not criminalized as a crime itself. Concerning Greek Civil Code, some articles do not allow marriage with a minor, unless there is a court decision and others that do not allow persons who are not capable (mentally or physically) to be married. Moreover, under article 1375 a marriage could be canceled if one of the parties was forced to be married. Because there are many different provisions concerning forced marriage we need to examine them one by one.

### **5.1. The cases of an invalid forced wedding**

According to article 1350 of the Greek Civil Law<sup>123</sup> “1. *In order to conclude a marriage, the agreement of the future brides and grooms is required. The relevant declarations are made in person and without condition or deadline. 2. The bride and groom must be at least eighteen years of age. The court may, after hearing the future bridegroom and the persons exercising custody of the minor, allow the marriage even before the completion of this age, if its performance is required by an important reason*<sup>124</sup>”. This exception, which may concern one or both future spouses, is provided for, in article 1350 § 2 sec. b. One of its conditions is the existence of an important reason for performing the marriage at a younger age. The important reason will be determined by the interest of the minor bride-to-be, e.g. pregnancy, risk of postponing marriage, long integrated relationship of future brides, etc. With early marriage, it is not enough that the vested interest of the minor is not harmed.

The Court should take seriously the maturity, the stability of the opinions, the whole personality, the mental contact, and the age of the bride and groom. As it follows from the wording of Article 1350 of the Civil Code, marriage between persons, of whom one is a minor, is allowed only after the permission of the Court (regardless of the consent or not of those exercising parental care over the minor) and only if it is imposed by an important reason.

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<sup>123</sup> Civil Code. Presidential Decree 456 of 17/24 October 1984 (Government Gazette A 164), firstly set into force in 1946.

<sup>124</sup> Greek Civil Law, Article 1350



The Court is called upon to accept or reject this case, whose decision must have the true interest of the minor as its sole objective<sup>125</sup>.

For example, according to the 66/2014 decision of the Magistrate's Court of Rhodes<sup>126</sup>, the magistrate allowed a 17 years old girl to marry her boyfriend, an adult, third-country national from Pakistan. The girl was in a relationship with the man for almost one and a half years before the court and she asked to get permission to marry him because they have had sexual intercourse and there was a high possibility for her to become pregnant. Moreover, the habitats of the small village where they lived created problems for them because they considered unethical the fact that the couple lived together without being married. The applicant explained to the court that her future husband was thirty years old, he lived in the country legally, he had a proper job, he received a good salary and he has become a Cristian. For all these reasons, the Court considered that it was in the best interest of the young girl to be allowed to marry her boyfriend and provided permission for the wedding.

Article 1351 of the Greek Civil Law says that *"Those who fall under one of the cases of article 128 and the first paragraph of article 131, as well as those who have been specifically prohibited from marrying, according to article 129 number 2, cannot enter into marriage"* and article 1352 *"Anyone who is in auxiliary legal assistance, full or partial which includes marriage, can only enter into marriage with the Consent of his legal assistant. If the latter refuses to consent, the court may, after hearing him, permit the conclusion of the marriage, if the interest of the co-conspirator so requires."*

According to the above-mentioned article, the declaration of the will is invalid if, at the time it was made, the person was not conscious of his actions or was in a mental disorder, which decisively limited the functioning of his will. More specifically, it follows from this provision that the declaration is invalid if, the person did not have a reasonable judgment that would allow him to freely determine his will with logical calculations and he was unable to comprehend the content and essence of the legal action he/she is attempting and the

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<sup>125</sup> Single-Member Court of First Instance Katerini, number of decision: 644/1988, published in "NOMOS"

<sup>126</sup> Magistrate Court of Rhodes, number of decision: 66/2014, published in "NOMOS"

consequences that will arise from it. The regulation refers to the incapacity at the time of the declaration of intent for the specific legal action, which is contested each time<sup>127</sup>.

As we can notice, articles 1350 to 1352 define the conditions under which a marriage can take place. According to article 1350, child marriage is forbidden unless there is a court decision for the marriage and articles 1351 and 1352 forbid an incapable person or under guardianship to marry without the permission of his/her guardian<sup>128</sup>. If such a marriage takes place, the marriage is invalid and has to be canceled, provided that the spouses did not give their true consent to the wedding. Moreover, a person who is incapable of making decisions (mental disorder), cannot marry without the consent of the legal guardian. In this case, the marriage is invalid and has to be dissolved with a court decision. The spouses, anyone who has a legal interest, or even the Public Prosecutor can ask for the annulment of a marriage, which took place in violation of the above-mentioned articles (art. 1373 of the Greek Civil Code), without any statute of limitations (art. 1380 Greek Civil Code).

The aforementioned cases could mean that the marriage, which is going to take place, is considered as a forced marriage. As we have already seen, child marriage is a form of forced marriage because minors are not considered capable of giving free and full consent and making such big decisions. Moreover, people who are under custody are incapable of deciding about their marriage because this decision creates many legal consequences for the spouses. These are the reason why the legislator establishes so restrictive prerequisites when it comes to a marriage of a minor or a mentally disturbed person.

## **5.2 Marriage that took place under threat**

In article 1375, we can see for the first time in the Greek Civil Code the concept of forced marriage in the following sentences “*A solemnized marriage may be annulled if the spouse was forced to enter into it by threat, illegally or contrary to morals. Annulment is excluded if the one who was forced recognized the marriage after the threat had passed.*”

A wedding is at risk of being annulled if one of the spouses enters into the marriage by threat. This is the only case in Greek Civil Law where the concept of forced marriage appears. The second paragraph of article 1375 predicts, “*annulment is excluded if the one who*

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<sup>127</sup> Appeals Court of Thessaloniki. Number of decision: 1736/2020, [1983], available at “NOMOS”

*was forced recognized the marriage after the threat had passed*" and there is a deadline of three months to apply for annulment of the wedding since the threat has disappeared and in general three years after the wedding took place.

At this point, we need to take a deeper look at the concept of forced marriage, as the Greek Civil Code establishes it. A marriage may be annulled if one of the spouses was forced to enter into it by threat, illegally or contrary to morals. By analogous application of what generally applies to the threat, it must be accepted that according to art. 1375 par. 1, this presupposes that the declaration by the person making the threat is illegal or against morals. The realization of a threat has to be within the authority of the offender and has to objectively expose the victim to a serious and immediate danger of his/her goods or to threat persons closely connected with him.

Therefore, the threat, coming from the future spouse or from a third party if the latter acted without the former's knowledge, must: a) must be capable of causing and actually caused the one who performed the marriage under threat, serious fear, which exists mainly when the consequences of this threat are directed against one's personality and justified, in the sense that the created danger is immediate and unavoidable, capable, under the specific circumstances, to create a similar feeling in a person, b) to have been carried out illegally or contrary to morals, such as when the threatened act is directly contrary to the law and c) to be causally related to the performance of the marriage, in the sense that the fear caused by the threat was the main and decisive element in shaping the will of the victim to perform the marriage, which without the threat he/she would not have performed.

When the above conditions of the threat (which can be expressed directly by the perpetrator to the victim or with the intervention of a third person, as long as it comes to the knowledge of the person to whom it was addressed) are met, they are determined by the circumstances and by the facts of the specific case, and the possibility of effectively dealing with the threat and preventing the emerging risk by invoking the assistance of the competent authority or by resorting to other legal means, which does not in itself constitute a reason that excludes the application of the provision of art. 1375 par. 1. However, it is considered with the other elements during the investigation of whether the threat was capable of causing and indeed caused fear to the threatened in the sense presented.

Finally, in order for the judge to submit to the law the incidents accepted as true, he can use the rules derived from common experience and knowledge, which every rational thinking person has<sup>129</sup>. A typical case of an illegal threat is observed when a threat is made e.g. murder, bodily harm, false reporting, etc. while an immoral threat exists when the threatened action is not unlawful but its purpose is frowned upon by social morality.

Unfortunately, there is only one case in the history of Greek justice where a wedding was annulled because it had taken place under threat. This is the 5205/1983 decision of the Appeals Court of Athens in which the Court cancelled the marriage, which had taken place under the threat to the life of the bride. More specifically, the groom in 1977 had broken the door of his girlfriend's house and keeping a knife had threatened her that if she did not accept marrying him, he would kill her. This man was facing serious mental issues and had caused injuries to other people on several occasions. As a result, the young woman was forced to marry him to protect her life. Under these circumstances, the court decided that this threat was serious enough to create fear and anxiety in every reasonable person, so they canceled the above-mentioned marriage<sup>130</sup>.

### **5.3 Consequences of an annulled marriage**

When a marriage is annulled with an irrevocable decision of the Greek Civil Courts, its effects are lifted, for any reason the marriage was annulled (art. 1381 Greek Civil Code). With the annulment of the marriage, the results are retroactively lifted, and the most important of them are the following<sup>131</sup>:

- a) The lifting of the intestate inheritance leaves. If the marriage is annulled after the death of one spouse, the abduction of the inheritance to the surviving spouse is reversed and he/she must return the inheritance to the other spouse's heirs. As it is easily understood, if the marriage is annulled before the death of the spouse, then the other does not have any right to the inheritance of the spouse.
- b) The annulment of the marriage has the effect of removing the obligation of the spouses to contribute to family needs or for maintenance.

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<sup>129</sup> Supreme Court. Number of Decision: 1036/1993, [1993], available at "NOMOS"

<sup>130</sup> Appeals Court of Athens. Number of Decision: 5204/1983, [1983], available at "NOMOS"

<sup>131</sup> Efi Kounergi Manoledaki. (2011). *Family Law*. Sakkoula, pp.83-84.

- c) Retroactive reversal of legal actions which took place between a third party and one spouse, who, however, acted in his conjugal capacity. If the third party acted with good faith then the results are not be reversed<sup>132</sup>.

Although, some effects cannot be overturned and the most important are that “*Children from an annulled marriage retain the status of a child born in wedlock*” (art. 1382 of the Greek civil code). If a forced marriage is annulled, children who were born during this marriage will be considered as children born within a marriage and the parents have both the right and the obligation to the custody of the children. Moreover, the children retain the right of inheritance towards both parents after the annulment of the marriage. As it is logical, due to the fact that the children of an annulled marriage maintain their status as children born within the marriage, kinship is maintained out of anxiety so as it is not allowed to be married with a first or second-degree relationship.

#### **5.4. Forced marriage in the Greek Criminal Law**

In Greek Criminal Law, forced marriage is not criminalized as a separate offense against the victim. It is mentioned under the umbrella of human trafficking in article 323A of the Greek Criminal Code, according to the provisions of the Istanbul Convention that Greece has ratified. Forced marriage is mentioned as an exploitation form for the victims of trafficking, specifically in par. 5 of article 323A “ *The concept of exploitation in the previous paragraphs includes the obtaining of an illegal financial benefit from: a) subjecting him to a status of slavery or practices similar to slavery, b) subjecting him to a status of indentured servitude, c) the work or begging of the victim (labor exploitation), d) the commission of criminal acts by him, e) the removal of cells, tissues or organs from his body, f) the performance by him of genital acts, real or pretended, or the provision of work or services whose sole purpose sexual stimulation (sexual exploitation) or g) forcing him into marriage*”. The perpetrator is punished with imprisonment at least of 10 years and financial penalty.

Unfortunately, there is not any decision issued by the Greek Criminal Court concerning a conviction for human trafficking when the exploitation is about forcing someone to be married. As it is already discussed, criminalizing forced marriage as a separate crime has advantages and disadvantages. It is important that the Greek legislator

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added forced marriage as a crime, which is punishable under the umbrella of human trafficking, hoping that in the future women will feel safe enough to denounce such a harmful practice.

Nonetheless, there are other criminal provisions, which could be enforced in case of a child marriage, which took place without the legal prerequisites. This is the case for the 342 par. 1 of the Greek Criminal Code according to which *“An adult who commits sexual acts with a minor whom he has been entrusted to supervise or guard, even temporarily, shall be punished as follows: a) if the victim has not reached the age of fourteen (14), with imprisonment of at least ten (10) years and a fine, b) if the victim has reached fourteen (14) years of age, with imprisonment and a fine”*.

From this provision, which aims to protect the purity of childhood, it follows that in order to establish the crime of 342 par. 1, the perpetrator have to be an adult and a person who is responsible for the minor in any way and the act must objectively, offends the common sense of modesty and the common understanding of morals. Subjectively it is required that the indecent act is directed to the satisfaction or stimulation of the sexual drive and desire of the perpetrator.

In this sense, it is a lewd act not only intercourse but also groping and touching of the genitals or other hidden parts of the body, the contact of the perpetrator's genitals with the minor's genitals, rubbing of his genital molecul in the body of the victim, the hugging and kissing of the child's face and body, as long as they tend to stimulate or satisfy the sexual desire of the perpetrator since they also offend the purity of childhood. The consent of the minor or his initiative or provocation is not important.

According to the above-mentioned, the ex-husband who has been married with a minor and the marriage is annulled, can be accused of abuse of the minor in the concept that he used to be a person who had the responsibility of the minor in any way and he took advantage in order to commit sexual acts. The ex-husband belongs to this category and since the marriage is dissolved, he may face criminal charges and it is not necessary for him to abuse or create a logical fallacy for the minor to be condemned for the crime.

The writer has an experience in trafficking cases because I am working as a lawyer in the field of human rights for almost five years and I have brought cases before the Greek courts, claiming that young girls were forced to be married in their countries of origin. It is a

very harmful procedure for the victim because she is called again and again to testify about the incidents that took place. Although there are specific provisions in article 228 of the Greek Code of Criminal Procedure, that the testimony of a victim of trafficking should be videotaped, there is not the appropriate equipment nor the knowledge from the police officers who conduct the interview with the victims. Moreover, the prosecutors who are responsible to move the criminal procedure most of the time reject the request on the grounds that there is not sufficient evidence for the acts that took place in a foreign country. As far as the writer is concerned, there are few, not to say any, the decision about forced marriage as an act of trafficking in Greece.

### **5.5 The case of marriage between third-country nationals in Greece**

In Greece, after the so-called refugee crisis in 2015, thousands of people have asked for protection in our country. Most of them are coming from Muslim countries and as it is normal, they are following their own ways and customs concerning the wedding. Article 1371 of the Greek Civil Code predicts that in the case of a marriage between heterodox or between different religions, the rite is performed as required by the doctrine of each of those entering into a marriage if it is recognized in Greece. From these provisions, it follows that the freedom of religious conscience is protected on the condition that this religion is recognized in Greece. A well-known religion is one that has, on the one hand, open and not hidden, publicly taught beliefs, and on the other hand, also open worship. It is also indifferent if its doctrine constitutes a heresy in relation to the religion that prevails in Greece, just as it is indifferent if the followers of this doctrine do not maintain ecclesiastical principles or if their religious ministers lack priesthood in the sense of the term established in the Orthodox Church.

From the above- mentioned it is clear that third-country nationals have the right to perform any kind of wedding they wish, provided that this type of wedding is predicted in their religion. According to decision 2772/2013 of the Multi-Member Court of First Instance of Athens<sup>133</sup>, it is valid the wedding that was performed in Egaleo of Attika, according to Nikah – Naraa type, under articles 8 and 10 of the Muslim Family Law, which was issued in 1961. This marriage was religious and was performed, according to the Muslim religion, by

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<sup>133</sup> Multi-Member Court of First Instance Athens, number of decision: 2772/2013, published in “NOMOS”

a religious minister who has this capacity, according to the rules of the above religion. Therefore, in accordance with what is mentioned, this marriage is valid.

It is worth mentioning that the provisions of the Greek law about the minimum age of marriage and about forced marriage are applicable in these cases because they are rules of public policy and no one can act in a different way. This means that it is illegal for a minor to be married unless there is a court decision and women have the free will to decide when and with whom they will be married. If a marriage, which took place under Muslim law was forced, then the marriage must be annulled and Greek Courts have the jurisdiction to examine such cases, as will be analyzed in the next chapter.

## Chapter 6

### 6.1. International Jurisdiction of the Greek Courts

#### a) Jurisdiction on civil law

When the time comes to examine a case of a forced marriage that took place and has to be annulled in Greece, we need to examine if the Greek Courts have the jurisdiction to handle such cases of third countries civilians. The answer to this question comes from different articles, which we will examine right now.

Starting with, article 22 of the Code of Civil Procedure states that “*local jurisdiction has the court in its district where the defendant has his residence, unless the law prescribes different*”, which means that when the defendant has his/her residence in Greece, the Greek Court is responsible to issue the decision. At the same time, article 39 of the Code of Civil Procedure provides concurrent special jurisdiction for matrimonial disputes, which includes disputes according to article 592 of the same Code, disputes concerning the existence or non-existence of a marriage, as well as its annulment, predicting that “*matrimonial disputes can also be filed in the court in whose district the place of the last joint residence of the spouses is located*<sup>134</sup>”. Article 39 of the Code of Civil Procedure, allows the Greek Courts to handle matrimonial disputes if the spouses have or used to have their habitual residence.

Furthermore, article 605 of the Civil Procedure Code states that “*The Greek courts do not have jurisdiction to adjudicate the disputes referred to in article 592 no. 1, if both spouses*

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<sup>134</sup> article 39 of the Code of Civil Procedure



*at the time the action is brought are foreigners, or if according to the law of the common citizenship of both spouses, or according to the law of the citizenship of one of them, the jurisdiction of another state is not recognized for the adjudication of the related differences”.*

Moreover, it is very important to mention the Council Regulation (EU) 2019/1111, which constitutes an internal part of the Greek legal framework. Namely according to the aforementioned Regulation, Greek courts have jurisdiction in the cases where<sup>135</sup>:

*“In matters relating to divorce, legal separation, or marriage annulment, jurisdiction shall lie with the courts of the Member State (a) in whose territory:*

- i. the spouses are habitually resident,*
- ii. the spouses were last habitually resident, insofar as one of them still resides there,*
- iii. the respondent is habitually resident,*
- iv. in the event of a joint application, either of the spouses is habitually resident,*
- v. the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made,*
- vi. the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question.*

*(b) of the nationality of both spouses<sup>136</sup>”.*

Namely, that means that according to European legislation the strongest link to the determination of the jurisdiction of any national court, and in this case of the Greek courts, is the habitual residence, or in any case the last common habitual residence. Moreover, we can see that the fifth and the sixth criterion, i.e. the residence of the applicant, is a direct effort to reduce the cases of the so-called forum shopping, that is for an applicant to move from one country to another solely to choose the jurisdiction of his/hers preference.<sup>137</sup> In other words, by demanding that the applicant should have a permanent residence in a state for at least six months in the case that he or she is a national of the Member State in question or at least one

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<sup>135</sup> Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)

<sup>136</sup> Art. 3 of the Regulation

<sup>137</sup> Jan-Peter Ewert, David Weslow. (2011). *Forum Shopping in Europe and the United States*. Vol. 66, No. 9

year for any other case, the European Union tries to create a real link between the applicant and the state that the application has been filed.

In the case of the present paper and the application of Article 3 of the Regulation, Greek Courts will have jurisdiction to examine if a marriage was forced or not, regardless of the nationality of the two parties, if Greece is the actual common residence of the couple, or was the last common residence of the couple, or is the residence of the respondent, or is the residence of the applicant for at least one year or six months if he or she is Greek. Therefore, we have reasons to assume that for all the people that live in Greece, European legislation has afforded a minimum of protection, with a particular focus on their present residence and not on the country where the marriage in question has taken place.

To be clear for the reader, it should be clarified that the Council Regulation (EU) 2019/1111 has supra-legislative power. As a result, it is obligatory for the Greek Courts to proceed with the examination of the annulment of a forced wedding, even if both spouses are third-country nationals. The strongest link to the determination of the jurisdiction of any national court is the habitual residence of spouses and article 605 of the Greek Code of Civil Procedure shall not be applied.

#### **b) Jurisdiction on criminal law**

When we need to examine the jurisdiction of the Greek Criminal courts the answer is more clear and we can find it in article 8 of the Greek Criminal code; “*Greek criminal laws apply to citizens and foreigners, contrary to local laws, for the following acts committed abroad: i) human trafficking*”. As is already mentioned, forced marriages are under the umbrella of human trafficking in Greece, and for this reason, Greek authorities have the right to investigate cases of human trafficking, and therefore forced marriages, that have taken place abroad.

### **6.2. Applicable law**

Now, moving on to the issue of the legal basis of the annulment of forced marriage by a Greek Court, regardless of whether the marriage was conducted in Greece or abroad and the nationality of the aggrieved parties, it derives first and foremost from international treaties

that constitute today an integral part of the Greek legal order and framework and that have already been mentioned in Chapter 3 of the present paper.

In addition, article 13 of the Greek Civil Code, *“The essential conditions of marriage are also regulated for the two persons who are going to marry by the law of the nationality of one of them. The type of marriage is regulated either by the law of the nationality of one of the persons to be married or by the law of the place where it takes place”*. About the substantial conditions that must be met and the obstacles that must not be faced by the persons who wish to marry, the applicable law is the law of the state of which they have citizenship, when it is common or, if they have different citizenships, any of the corresponding rights (article 13 par. 1 sec. a' of the Civil Code).

For the validity of the type of marriage, applicable is the law of the state of which the persons to be married have the nationality, when it is common or, if they have different nationalities, any of the laws of the state of their nationality or the law of the state in which the marriage takes place (article 13 par. 1 sec. b' of the Civil Code). From the point of view of private international law, in particular concerning the type of marriage, either the law of the nationality of one of the persons to be married or that of the place of marriage, applies. Since the two rights (citizenship and place) are mutually exclusive, what is investigated is whether the applicable formula satisfies these rights.

In addition, we should keep in mind that according to the provisions of Article 12 of the 1951 Geneva Convention on the Status of Refugees (Legislative Decree 3989/1959) *“1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence 2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee”*.

As is well known, *“A refugee is a person who fulfills the conditions included in the definition of article 1 of Legislative Decree 3989/1959. The fulfillment of these conditions precedes the solemn determination of refugee status. The recognition of refugee status therefore has a declaratory nature, that is, it declares the fact that the asylum seeker is a*

*refugee*". The jurisprudence of the Greek courts thus interprets article 12 of Legislative Decree 3989/1959, applying Greek law to cases of asylum seekers.

As it is stated in paragraph 1 of article 12 of the Geneva Convention of 1951, the personal status of refugees shall be governed by the state of residence. Paragraph 2 explicitly refers that personal status includes family law, which includes the law concerning succession (as well as filiation, adoption, legitimation, parental authority, guardianship, marriage, and divorce). Therefore, the authorities of the nation of residence will have the authority to perform marriages in conformity with the formal and substantive laws of their state. In a similar vein, courts will have the authority to grant divorces or annul a marriage, in conformity with the *lex fori* defining the grounds for divorce or annulment. The aforementioned allows the researcher to conclude that the Greek Civil Law shall be implemented in cases where the annulment of a wedding of refugees or asylum seekers is in question, regardless if the wedding took place in a third country or Greece.

According to the above-mentioned, the issue of the applicable law is not an easy task for the researcher. If one of the spouses is a Greek citizen the question may be easier to be answered because article 13 states that Greek Civil law is applied. On the other hand, if both spouses are third nationals, then applicable is the foreigner law of their common nationality, which is not always easy to be found by the Greek Courts in cases where an annulment of the marriage is in question. When the applicants are refugees and not migrants, then the Geneva Convention shall apply and according to article 12, Greek Civil law must always be applied.

### **6.3. Recognition of decisions about marriage annulment**

Regarding the issue of the recognition of the decision by the competent national courts, as they have been established by Article 3, is regulated by Article 38 of the same Regulation<sup>138</sup>. More specifically according to the aforementioned Article, "*The recognition of a decision relating to a divorce, legal separation or marriage annulment shall be refused: (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked (...)*"

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<sup>138</sup> Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)

We shall give special attention to case a) according to which in cases a recognition of a divorce, separation, or marriage annulment is manifestly contrary to the public policy of the Member State, shall not be given. That is because in cases where a divorce or a dissolution of marriage affords extremely limited rights to a woman for any number of reasons either due to the law under which the divorce was granted, such as sharia law in many countries, or the special circumstances of any divorce, such as adultery, this decision might as well be declared as non-enforceable by the national courts of the Member-States such as Greece.

To conclude, it is very important to mention that the right to family life and the right to marriage is fundamental human rights that all States must respect. In cases where third-country nationals are coming to Greece and wish to conduct a wedding under their religious practice and customs, the Greek State needs to assure that everyone will respect the rules of public policy. If this is not the case, then forced marriages must be annulled and Greek and European law should be applied.

### **Conclusion & Recommendations**

Dina is a young woman from Pakistan and she was born in the United Kingdom. As she narrates in Childline, a non-profit organization in England fighting against child marriage<sup>139</sup> *"I was 16 when mum took me out of school saying we had to travel to Pakistan to sort out some property issues. At first, I was happy to get out of school before the holidays and had never been on a plane before, but that all soon changed. When we got there mum said we needed to go shopping, all my cousins and aunts came but I couldn't understand why I was getting the most stuff. I also kept hearing stuff, bits said about me under their breaths, but I became worried when the word 'marriage' was being brought up. I was told we were heading to a family wedding for a cousin I hadn't met. Mum had packed a bag for me, saying it was because we were staying there for a few days after the ceremony. Once I was there, I was told that it was my wedding. I would be forced to get married. I cried, and told mum I was too young, he was too old, I hadn't finished school, and I was scared and didn't want to do it. It was like she didn't care"*.

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<sup>139</sup> Childline [online] Available at: < <https://www.childline.org.uk/> > [Accessed 24 October 2022].

As has already been mentioned, forced marriage is a worldwide phenomenon that disproportionately affects girls and women. Greece has accepted an unprecedented number of refugees and migrants who brought their customs and beliefs. Working in the field with refugees and migrants as a lawyer for almost 5 years now, I have faced many cases where “consent” and “moral” were so close that women or young girls were actually forced to be “the good girl” and follow the norms like Dina, in the previous example.

Empowering women and girls is the basic pillar where all strategies should be focused in order to achieve changing the narrative and leave behind the culture that all refugees are bringing with them. Especially when it comes to refugee camps, which are micro societies similar to the refugee’s homelands, we should be very careful and alert to prevent such actions. It is likely to see that women who do not want to follow the norms are finally obliged to do so because otherwise, the community will consider them immoral, and sometimes this could lead to gender-based violence.

The Ministry of Education and Social Affairs, in collaboration with the NGOs that are working in the field with refugees, should create specific educational programs that would encourage young girls to go to school targeting more girls at risk of dropping education. This could help girls acquire the right skills to find a job that would offer them a good salary. As a result, poor families would be motivated to send their girls to school rather than marry them to rich men. In order to achieve a better outcome and the highest level of education, the government should create more intercultural schools and fund specific programs that would hire interpreters to help refugee girls, who do not speak the language, understand and communicate better in school.

Furthermore, the state shall provide equality between women and men and more opportunities should be given to young refugee or migrant girls. This could mean that companies or employers should be subsidized to create more jobs for young women and protect them by working in a safe environment. For example, the girls could work in the tourism sector, which is one of the country's biggest earners. This would mean that the large hotel units throughout Greece could sign specific employment contracts with the ministry, which would only concern female refugees and would offer a premium for each recruitment of such girls. Also, a special committee to monitor the working conditions of these girls

should be set up to ensure that they do not fall victim to labor exploitation, that they will be paid properly and that they can turn to a specific person if they need any assistance.

Another very important recommendation to end forced marriage would be the well know, shadow reports that NGOs can provide to the European Union about the implementation of the International and European treaties that Greece has ratified on forced marriage. In this way, we can have more data to analyze, because today there is not much information about forced marriage. In addition, they should assess the role of customary and religious laws condoning forced marriage and promote dialogue with traditional and religious leaders to identify practical ways to reduce this phenomenon

If the above is followed, women will likely find the courage to speak about forced marriage, seeking help and denying such actions. The European Union has to enhance this effort by creating special Committees, which will battle against forced marriage in all the European States because the movement of the population did not take place only in Greece but in the whole world. It is my wish that this thesis could be the begging of the creation of a new strategy that will help the Greek State to create a new campaign to inform not only refugees and migrants but all the Greek society about the phenomenon of forced marriage and how we can help to its elimination.

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**Dedications**

I would like to dedicate this work to my future husband L.Y., who is always by my side and supports me in any way, making me believe in myself and have faith.