

The criminalisation of forced marriage across Europe

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On 8 June 2012 the Government announced that forced marriage will become a specific criminal offence. The legislation will be introduced in 2013/2014 parliamentary session. The decision to criminalise forced marriage emanates from concerns that the current legal initiatives are not tackling forced marriage. Research carried out by the Department for Children, Schools and Families estimated that the 'national prevalence of reported cases' of forced marriages in England was between 5,000 and 8,000.

The criminalisation of forced marriage announcement coincided with the Government signing the Council of Europe's convention on preventing and combating violence against women and domestic violence (CAHVIO). Signing the convention reflects the Government's continuing commitment to tackling violence against women and girls, including forced marriage and psychological violence. The convention establishes high standards in the prevention of gender-based violence, protection and assistance for victims and prosecution of perpetrators. States are now obliged to introduce offences for these acts where offences do not currently exist in their legal systems.

In criminalising forced marriage, Britain has joined a Europe-wide movement. This article provides an overview of the legislation on forced marriage in EU Member States which have led the forced marriage debate. Although forced marriage is contrary to the law in all EU Member States, their legal approaches vary. There is evidence of a trend in some states towards criminalisation of forced marriage while others rely on civil law and other criminal offences which encapsulate the behaviour behind forced marriage. Many EU Member States consider that a specific criminal offence of forced marriage is not needed because forced marriage is prohibited by all national laws and international treaties.

EU Member States are party to several international conventions which outlaw forced marriage. All EU Member States have ratified Art 16(1)(b) of the UN Convention on the Elimination of all Forms of Discrimination against Women, which includes forced marriage as a form of discrimination against women. In addition, Art 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and Art 9 of the European Charter of Fundamental Rights have been read to include the right not to marry. See also Art 16(2) of the Universal Declaration of Human Rights 1948 which states that 'men and women of full age . . . have the right to marriage' and that 'marriage shall be entered into only with the free and full consent of the intending spouses'. Also Art 23 of the International Covenant on Civil and Political Rights 1966 and Art 10(1) of the International Covenant on Economic, Social and Cultural Rights use similar wording to reiterate this right.

Similar principles are expressed in international documents, including the International Covenant on Civil and Political Rights and the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage 1962 which affirms that all states should ensure complete freedom in choice of a spouse. This has been signed by Denmark, The Netherlands, Sweden, France, Italy, and adopted by Austria, Germany, Norway, Spain and the UK. The right to freely consent to marriage is enshrined in the UN International Covenant on Civil and Political Rights 1966 and the UN Convention on the Rights of the Child 1989.

Despite the vast number of international treaties prohibiting forced marriage, most EU Member States do not have a specific crime of forcing someone into marriage. It is usually considered to be unnecessary. The general view is that forcing somebody into marriage involves other criminal offences that can be used to convict the perpetrator, such as abduction, kidnapping, rape and various crimes of violence. However, there are a number of EU Member States where there is

an absence of legal provisions relevant to the behaviour associated with forced marriage. For instance, in Czech Republic and Romania, marital rape is not recognised as a specific criminal offence. The lack of relevant laws means perpetrators are immune from punishment.

Following concerns that current legal initiatives are not tackling the practice, the Council of Europe's study 'Forced marriages in Council of Europe Member States' in 2005 recommended a specific offence of forced marriage be enacted in European countries. Since this study was released in 2005, a number of EU Member States have enacted a criminal offence of forced marriage. Denmark, Germany, Austria, Malta, Belgium and Cyprus have criminalised the practice. Forced marriage is also a criminal offence in Norway; although Norway is not an EU Member State it is subject to EU legislation through the European Economic Area Agreement.

Although forced marriage is a criminal offence in seven European countries, there are a number of disparities in the way in which the criminal offence of forced marriage has been drafted in each country. The disparities include the definition of forced marriage, the provisions for prosecution, sentence imposed for committing such an offence and the extra-territorial nature of an offence.

Different countries employ different definitions of forced marriage. This has caused difficulties in drafting a consistent criminal offence of forced marriage across Europe. A Council of Europe study in 2005 defined forced marriage more broadly as 'an umbrella term covering marriage as slavery, arranged marriage, traditional marriage, marriage for reasons of custom, expediency or perceived respectability, child marriage, early marriage, fictitious, bogus or sham marriage, marriage of convenience, unconsummated marriage, putative marriage, marriage to acquire nationality and undesirable marriage – in all of which the concept of consent to marriage is at issue.'

As this suggests, there is a lack of clarity about the precise definition of forced marriage. Some European countries have used the difficulty in conceptualising forced marriage as an opportunity to view arranged marriage as overlapping with forced marriage. Denmark's 2003–2005 action plan targets 'forced, quasi-forced and arranged marriages', all of which are identified as the subjugation of women.

Recognising the difficulty in conceptualising forced marriage, all of the European countries that have criminalised the practice have done so by defining forced marriage broadly. In fact, Art 222.2 of Norway's Criminal Code defines forced marriage as 'anyone who forces another person to conclude a marriage through recourse to violence, deprivation of liberty, undue pressure or other unlawful behaviour or through the threat of such behaviour.' Meanwhile, Austria recognises forced marriage as 'a crime against personal autonomy' (BGB1 I Nr 56/2006). A theme running throughout offences of forced marriage is the need to ensure that forced marriage is defined broadly to ensure that all forms of behaviour are encapsulated within an offence.

In the UK, the Government has been keen to stress that victims are to be given prominence when dealing with forced marriage cases, although it remains to be seen whether the Government will support the prosecution of defendants without the victim's consent. Meanwhile, Norway and Austria prosecute defendants in forced marriage cases with or without the victim's consent, similar to domestic violence cases. While some believe that prosecution is in the public interest, others argue that pursuing prosecution without the victim's consent further disempowers them, which is contrary to the ideology behind criminalisation. Considering the ramifications that prosecution provisions could have on victims of forced marriage, it is surprising that EU Member States have not engaged in dialogue to discuss the effect of prosecution provisions and to ensure consistency in their approach towards prosecution.

Another disparity among EU Member States is the sentence imposed for an offence of forced marriage. There is no European sentencing standard for forced marriage. The maximum sentence imposed on defendants varies across European countries. Maximum imprisonment in Norway is 6 years. Austria and Germany impose a maximum sentence of 5 years' imprisonment. In Denmark and Belgium, defendants could be imprisoned for up to 2 years. The criteria for sentencing vary across these countries according to whether the aims of sentencing are to provide just deserts,

rehabilitation or deterrence. The solution for the disparity problem lies in making the reasoning for sentencing uniform and imposing a consistent sentence across Europe for forced marriage.

European Member States have also been inconsistent in ensuring a forced marriage offence is extra-territorial. Only recently, Austria recognised the importance of an extra-territorial offence and the Austrian Government announced plans in November 2011 to amend their existing forced marriage offence to make it extra-territorial. Affirming the importance of an extra-territorial offence of forced marriage, evidence across Europe indicates that forced marriages occur transnationally. To ensure that a criminal offence of forced marriage is effective and enforceable in practice, the offence must be extra-territorial to enable the prosecution of defendants for threatened and actual forced marriages that occur abroad.

Developing legislation collectively across Europe is only the first step in combating forced marriage. If forced marriage is to be dealt with and, ultimately, eradicated, the legislation must be effectively drafted to ensure it is enforceable. As has been demonstrated, there are a number of disparities in the way in which a criminal offence of forced marriage has been drafted across Europe. It is imperative that European countries consult with each other to ensure the development of coherent and consistent legislation on forced marriage across Europe. At present the Swedish Government are consulting on the criminalisation of forced marriage following a 2-year report which concluded with a definite need for criminalisation. This is an opportune time for EU Member States to engage in dialogue regarding the criminalisation of forced marriage.