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Fundamental rights and Diversity

“Forced marriage in the communities of refugees”



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Fundamental rights and Diversity

Forced marriage in the communities of refugees

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The legal framework against forced marriage

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 State¹.*”

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 women².

The Recommendation regarding consent for marriage, the minimal age to marry and the registration of marriages signed in 1965 by the United Nations³, 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*

¹ *Universal Declaration on Human Rights*. (1948). United Nations

² *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (1962). General Assembly resolution 1763 A (XVII)

³ *Resolution 2018* (XX), from the 1st of November of 1965.

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)⁴ and the International Covenant on Economic, Social and Cultural Rights (article 11)⁵. 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)⁶ 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 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*

⁴*International Covenant on Civil and Political Rights*. (1966). [online] Available at: <<https://www.ohchr.org/sites/default/files/ccpr.pdf>> [Accessed 10 July 2022].

⁵*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].

⁶*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].

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 Women⁷ 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.”*

General Recommendation No. 21 of the Committee⁸ 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*

⁷ *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> [Accessed 10 July 2022].

⁸ *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].

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)⁹ 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.

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*

⁹ *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].

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.

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 16¹⁰ and Pakistan made a general Declaration about the Provisions of the Constitution of the Islamic Republic of Pakistan¹¹. 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.

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.

¹⁰ 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"*

¹¹ 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"*

CEDAW has been ratified by Afghanistan with no reservation and has not been ratified by Somalia. The Syrian Arab Republic¹² 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 Law¹³.

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) 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

¹² 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

¹³ 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"

sexual and reproductive health along with forced sterilization, forced virginity examinations etc¹⁴.

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”*¹⁵.

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”*.

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

¹⁴ 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].

¹⁵ 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>>

fertility¹⁶. 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.

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 Union¹⁷ 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 them¹⁸. 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”*.

¹⁶ 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].

¹⁷ 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].

¹⁸ 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> [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 victims¹⁹, 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 Directive²⁰ 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 Recognition²¹ 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 reunification²², 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 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 violence²³ 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

¹⁹ 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].

²⁰ 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=OJ:L:2012:315:0057:0073:EN:PDF>> [Accessed 17 July 2022].

²¹ 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].

²² 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].

²³ 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> [Accessed 17 July 2022].

women's rights and prevent such harmful practices. Moreover, in 2005 Resolution 1468 from the Parliamentary Assembly of the Council of Europe on Forced Marriages and Child Marriages²⁴ 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*”.

The Parliamentary Assembly issued in 2009 Resolution 1681 concerning the crimes of honor²⁶, 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.

²⁴ 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].

²⁵ 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].

²⁶ 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].

3.2. The Istanbul Convention

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 violence²⁷, 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*”.

²⁷ 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].

3.3. Legislation concerning forced marriage in the European States

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 marriages²⁸.

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

²⁸ European Parliament, *Resolution on women's immigration the role and place of immigrant women in the European Union*, 2006/2010(INI).

when someone coerces a person to marry abroad or prevents this person from returning to Germany²⁹.

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 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 victims³⁰.

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 wedding³¹.

²⁹ Germany, German Criminal Code (Strafgesetzbuch, StGB), Art. 237, www.gesetze-im-internet.de/stgb/_237.html.

³⁰ United Kingdom, Parliament (2007)

³¹ 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.

Some other states that have also criminalized forced marriage as a separate criminal offense are Austria³², Belgium³³, Bulgaria³⁴, Croatia³⁵, Cyprus³⁶, Denmark³⁷, Spain³⁸, Luxembourg³⁹, Malta⁴⁰, Portugal⁴¹ Slovenia⁴², and Sweden⁴³. 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 penalties for violence, torture, or barbaric acts or murder are increased where the committed offense is to force a person to marry⁴⁴. 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 prison⁴⁵.

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

³² Article 106a Criminal Code of Austria.

³³ Article 391 Criminal Code of Belgium.

³⁴ Article 177 Criminal Code of Bulgaria

³⁵ Article 169 Criminal Code of Croatia.

³⁶ Chapter 154 Criminal Code of Cyprus.

³⁷ Section 260 Criminal Code of Denmark.

³⁸ Organic Law 10/1995

³⁹ Article 387 Criminal Code of Luxembourg.

⁴⁰ Article 251G Criminal Code of Malta.

⁴¹ Article 254-B Criminal Code of Portugal

⁴² Article 132.a Criminal Code of Slovenia.

⁴³ Chapter 4 Criminal Code of Sweden

⁴⁴ France, Violence against Women Act, Art. 1. Available at www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=FDBA3C30EB891E30384ECFAB1170CEECPDjo13v_1?idArticle=JORFARTIO00022454036&cidTexte=JORFTEXT000022454032&dateTexte=29990101&categorieLien=id.

⁴⁵ The Netherlands, Penal Code, Section 284

women survivors of gender-based violence showed that 62 of them had been victims of forced marriage with 77% being younger than 21 years old⁴⁶.

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 are very important to prevent forced marriage but the autonomy of the individual should also be respected and not violated⁴⁷.

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 number⁴⁸. 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

⁴⁶ FM Out (2021). Finding Ways out to forced marriages. Training Material. Available at: https://www.fmout.eu/wp-content/training-materials/Training_materials.pdf

⁴⁷ 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]

⁴⁸ International Labour Organization and others. (2022) *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. p.59

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.

4. Case Law on forced marriage

4.1 Forced Marriage as a reason for granting international protection

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 826⁴⁹

⁴⁹European 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

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 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 FGM. 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 2017⁵⁰

⁵⁰ 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>

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 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 2017⁵¹

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.

⁵¹ 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%20-%202017-12-12.pdf

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. 72515/2022⁵²

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. 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

⁵² Unpublished.

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 soldiers⁵³. 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 slavery⁵⁴”*. 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

⁵³ Haenen, I. (2014). *Force & Marriage: The criminalisation of forced marriage in Dutch, English and international criminal law*.

⁵⁴ *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).

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 victory⁵⁵. 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*,⁵⁶ and the case of the Republic of Mali in 2012 where rebels were threatening families to hand over their daughters as “wives” to the rebels⁵⁷.

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 and sexual violence*”⁵⁸ 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

⁵⁵ 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, [Accessed 24 July 2022]

⁵⁶ UN GA /SC, *Report of the Secretary-General on sexual violence in conflict*, UN Doc. A/67/792-S/2013/149, (2013), para. 21.

⁵⁷ UN GA /SC, *Report of the Secretary-General on sexual violence in conflict*, UN Doc. A/67/792-S/2013/149, (2013), para. 54.

⁵⁸ University of Minnesota, (2008) *Prosecutor v. Brima, Case No. SCSL-2004-16-A, Appeals Judgment*. par. 200 [online] Available at: <http://hrlibrary.umn.edu/instreet/SCSL/SCSL-04-16_Files/SCSL-04-16-A-675.htm> [Accessed 24 July 2022].

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 attacks⁵⁹.

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.

4.4. 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

⁵⁹UF 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

their religion. According to decision 2772/2013 of the Multi-Member Court of First Instance of Athens⁶⁰, 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 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.

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 marriage⁶¹ *"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*

⁶⁰ Multi-Member Court of First Instance Athens, number of decision: 2772/2013, published in "NOMOS"

⁶¹ Childline [online] Available at: < <https://www.childline.org.uk/> > [Accessed 24 October 2022].

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".

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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