



Doc. 14592
27 June 2018

Forced marriage in Europe

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Ms Azadeh ROJHAN GUSTAFSSON, Sweden, Socialists, Democrats and Greens Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Equality and Non-Discrimination, Ms Béatrice Fresko-Rolfo (Monaco, ALDE), on her comprehensive report, which builds on the Assembly's [Resolution 1468 \(2005\)](#) on forced marriages and child marriages and incorporates recent developments regarding these issues.
2. The committee supports in particular the renewed call for signature and/or ratification, and in particular the effective implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention"), which includes essential legal provisions to prevent forced marriage and protect victims.
3. The committee proposes certain amendments to further strengthen the draft resolution in light of international standards enshrined in the Istanbul Convention and the United Nations Convention on the Elimination of All Form of Discrimination against Women (CEDAW).

B. Proposed amendments

Amendment A (to the draft resolution)

At the end of paragraph 3, add the following sentence:

"A marriage in which at least one of the parties is not free to put an end to the marriage or to leave his or her spouse is also a forced marriage."

Amendment B (to the draft resolution)

In paragraph 7.5.1, after the word "criminalise", add the following words:

“, as a specific offence, intentional”

Amendment C (to the draft resolution)

In paragraph 7.5.1, replace the words "perpetrators of such offences", with the following words:

"perpetrators and those who aid, abet, or attempt to commit such offences"

1. Reference to committee: [Doc. 14115](#), Reference 4241 of 14 October 2016. Reporting committee: Committee on Equality and Non-Discrimination. See [Doc. 14574](#). Opinion approved by the committee on 26 June 2018.



Amendment D (to the draft resolution)

In paragraph 7.5.4, after the words “civil law measures”, insert the following words:

“with appropriate safeguards and limitations”

C. Explanatory memorandum by Ms Rojhan Gustafsson, rapporteur for opinion

1. I can only congratulate Ms Fresko-Rolfo on her report, which provides an excellent analysis of the influence and consequences of forced marriages in Council of Europe member States. I was very concerned to read that these harmful practices affect above all women and girls, but that they also affect men and boys, as well as lesbian, gay, bisexual, transgender and intersex (LGBTI) people or people with an intellectual disability. This report demonstrates how important it is to have knowledge and collect data on forced marriages and proposes pertinent solutions to prevent, detect and facilitate the annulment of such marriages.

2. I welcome in particular the inclusion of child marriage, where one or both of the parties is under 18 years of age and thus not capable of personally expressing their full, free and informed consent,² within the definition of forced marriage. As mentioned by Ms Fresko-Rolfo, the Parliamentary Assembly in its [Resolution 1468 \(2005\)](#) on forced marriages and child marriages has previously urged national parliaments of the Council of Europe to adapt their domestic legislation, so as to “fix at or raise to 18 years the minimum statutory age of marriage for women and men”. I also believe that a child is not capable of making decisions that affect her or his life, otherwise it would open the door to serious risks of recurrent violations of these persons’ human rights. The assimilation of forced marriage with child marriage is in my opinion possible.

3. I welcome in particular the call to recognise forced marriage as a ground of international protection in line with the existing international standards and principles³ and the call to criminalise conduct which may amount to forced marriage as adequately defined by the report.

4. I recall that a report on the “Compatibility of Sharia law with the European Convention on Human Rights: can States Parties to the Convention be signatories of the ‘Cairo Declaration’?” is being prepared by the Committee on Legal Affairs and Human Rights which “resolves to investigate the compatibility of Sharia law, including its informal application, with the [European Convention on Human Rights (ETS No. 5)] and the implications for State Parties of adherence to the Cairo Declaration”. The Cairo Declaration stipulates in particular that “there are no other crimes or punishments than those mentioned in the Sharia”. This could be problematic with regard to the criminalisation of forced marriage.

5. However, I should like to propose a few amendments to the draft resolution in order to enhance, from a legal point of view, certain proposals concerning forced marriages in Europe. Before providing some explanatory details on these amendments, I take this opportunity to add some brief comments on the report.

1. Additional comments to the report

6. I would like to take note in particular of the judgment of the European Court of Human Rights in the 2015 case of *Z.H. and R.H. v. Switzerland*.⁴ In this case, the Court held that “Article 8 (on family life) of the [European Convention on Human Rights] could not be interpreted as imposing on a member State an obligation to recognise a marriage, religious or otherwise, contracted by a 14-year old child”. It noted in this connection that “Article 12 expressly provides for regulation of marriage by national law, and given the sensitive moral choices concerned and the importance to be attached to the protection of children and the

2. Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, 4 November 2014, CEDAW/C/GC/31CRC/C/GC/18, paragraph 20; CEDAW/C/GC/32; Steering Committee for Human Rights (CDDH), Guide to good and promising practices aimed at preventing and combating female genital mutilation and forced marriage, 4 August 2017, CM(2017)92-add2, paragraph 460.

3. Office of the United Nations High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article A1(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002, HCR/GIP/02/01; Committee for the Elimination of Discrimination Against Women, General Comment No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 14 November 2014, CEDAW/C/GC/32; CDDH, Guide to good and promising practices aimed at preventing and combating female genital mutilation and forced marriage, 4 August 2017, CM(2017)92-add2.

4. Application No. 60119/12, judgment of 8 December 2015.

fostering of secure family environments, this Court must not rush to substitute its own judgment in place of the authorities who are best placed to assess and respond to the needs of society". This implies that member States enjoy a certain margin of appreciation in this area.

7. I was nevertheless concerned to read in Ms Fresko-Rolfo's report that by 2013, less than half of the member States of the Council of Europe had policy addressing forced or early marriage. The Istanbul Convention requires its States Parties to take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised. By signing, ratifying and/or implementing the Istanbul Convention, member States take a firm stand against forced marriage (Article 37 of the Istanbul Convention).

8. Moreover, the Court in the case of *Z.H. and R.H. v. Switzerland*⁵ also considered that the "fact that the applicants had not yet taken any steps to seek recognition of their religious marriage in Switzerland" provided additional justification to considering that the applicants were not married. Guarantees for civil registration of marriages and births, as mentioned in the discussed resolution, should be adequately applied in European democratic societies. This is particularly relevant where religious marriages are not necessarily accompanied by civil registrations. Indeed, where the authorities tolerate non-registration of religious marriages, this may create a situation in which forced marriages occur more easily, since they need not be brought to the authorities' attention.

9. This situation also raises the question of forced marriages or child marriages contracted abroad, in person. In the case of *Z.H. and R.H. v. Switzerland*⁶ for example, a religious marriage took place when the applicants were in Iran. In this regard, I would like to recall in particular the Assembly's position in [Resolution 1468 \(2005\)](#) where it urged national parliaments of Council of Europe member States to "adapt their domestic legislation, if appropriate, so as to refrain from recognising forced marriages and child marriages contracted abroad except where recognition would be in the victims' best interests with regard to the effects of the marriage, particularly for the purpose of securing rights which they could not claim otherwise" (paragraph 14.2.4).

2. Explanatory notes

2.1. Amendment A (to the draft resolution)

This amendment aims to clarify the definition of forced marriage, in line with the United Nations CEDAW⁷ and paragraph 14 of Ms Fresko-Rolfo's report, as a marriage in which one of the parties is not permitted to end or leave it, including as a result of duress or intense social or family pressure.⁸ Each party should have access to adequate information on his or her rights, and be in a capacity to put an end to an abusive situation, or a situation that is against the will of one of the parties. If this is not the case, the situation should be assimilated to a forced marriage, where one or both of the parties become trapped in their own marriage.

2.2. Amendment B (to the draft resolution)

This amendment aims to criminalise forced marriage as an independent criminal offence, as suggested by Assembly [Resolution 1468 \(2005\)](#) (paragraph 14.4) and Ms Fresko-Rolfo in her explanatory report (paragraph 57) when explaining that the establishment of a "specific criminal offence makes it possible to prosecute the perpetrators of forced marriages independently of whether other offences have been committed". It aims also to insert the word "intentional" to describe the conduct according to the definitions prescribed by Article 37 of the Istanbul Convention.

2.3. Amendment C (to the draft resolution)

This amendment aims to ensure that the resolution recommends the prosecution of everyone who should be considered criminally liable in relation to forced marriages, in accordance with Article 41 of the Istanbul Convention. Someone who conducts a marriage ceremony knowing that it amounts to a forced marriage could be considered as aiding or abetting the commission of an offence.

5. Ibid.

6. Ibid.

7. CEDAW/C/GC/31CRC/C/GC/18, paragraph 23.

8. CM(2017)92-add2, paragraph 459; CEDAW/C/GC/31CRC/C/GC/18, paragraph 23.

2.4. Amendment D (to the draft resolution)

This amendment aims to ensure that civil law measures such as travel bans and protection orders do not impose undue restrictions on people's freedom of movement, autonomy and right to family life. An adequate balance shall be found between the necessity to protect the physical integrity and mental health of the person, while ensuring these protective measures are guaranteed by the court and are complemented with proper time restrictions, in order to avoid undue interferences with the affected person's rights.