Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2481 (2023)[1]

Finding solutions for marital captivity

Parliamentary Assembly

1. Marital captivity arises when a person who has entered into a marriage wishes to end it, but finds that they are unable to do so, either legally or in the eyes of their community. It may concern cases where a marriage has been concluded and is recognised under the civil law in force in the country where the trapped spouse lives, as well as marital situations that are not recognised under the applicable civil law. The phenomenon is little known but is estimated to affect tens of thousands of people – mostly women – in Europe every year.

2. Situations of marital captivity violate the human rights of those that they affect. States therefore have a duty to combat this phenomenon actively.

3. Marital captivity is an infringement on the trapped spouse's personal autonomy, a basic principle of human rights law. Persons trapped in marital captivity lose their independence and their right to self-determination. They often cannot start a new relationship or remarry, especially where they may be considered by their community to have committed adultery or bigamy. They may be prevented from travelling, in particular if their marriage continues to have legal effect in a country where the husband's approval is necessary to renew the wife's passport. The impact on children can also be devastating, as they grow up in an unsafe and unstable environment. Moreover, a person who tries to put an end to this situation may find themselves alone and isolated from their own community, and may encounter serious violence and threats. These can include the risk of so-called "honour"-based violence, a particularly egregious offence which is prohibited under international law.

4. The human rights issues at stake are wide ranging. Marital captivity may, for example, lead to violations of Articles 5 (right to liberty and security), 8 (right to respect for private and family life), 12 (right to marry) and 14 (prohibition of discrimination) of the European Convention on Human Rights (ETS No. 5), as well as rights codified in the European Social Charter (revised) (ETS No. 163) and in the United Nations International Covenant on Economic, Social and Cultural Rights.

5. Although it is not expressly prohibited under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention"), marital captivity may also violate a wide range of provisions under this convention. Moreover, many of the measures that States are called upon to take under the Istanbul Convention in order to prevent, prosecute and provide protection from all forms of violence against women and domestic violence also provide highly effective means of combating marital captivity.

6. To tackle marital captivity effectively and put an end to the human rights violations that it causes, States must address the full scope of situations potentially concerned. These include cases where one party to a civil marriage is unable to put an end to it, for example due to obstacles to obtaining a civil law divorce, because of a conflict of laws between countries or risk of losing residency status in the country where they live, or because of coercion (notably psychological, physical or economic) exerted by the other party. They may also include cases where a religious or customary marriage has been concluded (with or without a civil marriage), which one party is unable to end due to religious or customary law or practices.

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1. *Assembly debate* on 25 January 2023 (6th sitting) (see Doc. 15679, report of the Committee on Equality and Non-Discrimination, rapporteur: Ms Margreet De Boer). *Text adopted by the Assembly* on 25 January 2023 (6th sitting).

7. The Parliamentary Assembly welcomes the fact that some States have begun to take measures to strengthen their legislation in this field, and that many measures taken to implement the Istanbul Convention may also provide solutions to some aspects of cases of marital captivity. Civil society organisations, notably women's rights organisations, organisations working with migrant women and feminist religious organisations, have also identified effective strategies for preventing marital captivity and means of responding to the needs of women unable to leave their marriage or marital situation.

8. The level of awareness of these important human rights issues remains too low, however, and there is a pressing need to take measures to prevent marital captivity and ensure that effective solutions are readily accessible to victims wherever it occurs.

9. In the light of these considerations, the Assembly invites Council of Europe member States as well as observer States and States whose parliaments enjoy observer or partner for democracy status with the Assembly:

9.1. as regards strengthening the law in this area and its implementation, to:

9.1.1. ratify and implement the Istanbul Convention, if they have not yet done so;

9.1.2. refrain from depositing reservations to Article 59 of the Istanbul Convention and withdraw any reservations already deposited;

9.1.3. ensure that putting an end to a situation of marital captivity will not cause the trapped spouse to lose their residency status;

9.1.4. step up their efforts and diplomacy to prevent transnational situations of marital captivity from arising due to inconsistencies between laws;

9.1.5. strengthen wherever necessary the criminal law provisions applicable to coercive or controlling behaviour, as well as those applicable to other forms of psychological, economic and physical coercion, in order to ensure that they effectively apply to all cases of marital captivity, whether or not there is a legally recognised marriage and including where the spouses no longer live together;

9.1.6. train police and legal professionals to recognise situations of marital captivity and to use these provisions effectively;

9.1.7. ensure that perpetrators of forms of marital captivity that fall within the ambit of the criminal law are prosecuted, in order to put an end to impunity in this area;

9.1.8. ensure that no-fault civil divorce is available to everyone and that civil divorce proceedings are accessible to everyone, including by making legal aid available to all persons in situations of marital captivity, regardless of their residency status;

9.1.9. explore means of using the legal system to combine civil divorce proceedings with an obligation to co-operate with religious divorce proceedings, without placing the trapped spouse at risk of criminal proceedings if they seek to use these provisions;

9.2. as regards preventive measures, to:

9.2.1. work together with religious and other communities, using a bottom-up, internormative approach and involving interdisciplinary networks of experts as well as activists already working within these communities to combat marital captivity, in order to overcome religious attitudes and customary practices that favour marital captivity;

9.2.2. actively support the efforts of religious communities and organisations that are seeking to promote the use of prenuptial contracts as a means of preventing situations of marital captivity from arising;

9.2.3. ensure that women migrating to a country to accompany their husband or in order to marry are fully informed, before they leave their country of origin and in their own language, as to their rights in the destination country and about how to seek support if necessary;

9.2.4. support the activities of civil society organisations working to reach out to and empower women most at risk of marital captivity, notably women who may be living in isolation from the broader community and migrant women whose residency status may be at risk if they put an end to their marriage;

9.2.5. run awareness-raising campaigns on marital captivity and make information readily accessible in all necessary languages about what marital captivity is and the solutions that exist;

9.3. as regards measures to protect victims, to ensure that the full range of support measures set out in the Istanbul Convention is available to persons seeking to escape situations of marital captivity and, in this context, to ensure in particular that:

9.3.1. adequate structures are in place to assist victims of marital captivity, including telephone helplines for urgent calls and accommodation and shelters for women and girls who have had to leave their home;

9.3.2. support provided to victims of marital captivity effectively guarantees their financial security and independence;

9.3.3. victims of marital captivity do not lose their residency status but are granted autonomous residency permits;

9.4. as regards broader policy measures, to:

9.4.1. include the fight against marital captivity in their national policies and practices to prevent and combat violence against women and girls and domestic violence;

9.4.2. collect accurate and comparable data on marital captivity, broken down by gender and age, and carry out detailed studies on the causes and frequency of this practice and on the associated risk factors.

10. The Assembly expresses its support for civil society organisations working to raise awareness of and combat marital captivity and calls for these organisations to be given stable and long-term backing, including financial resources.