It is never **EASY** to talk about this

Increasing dialogue, awareness, and victim-centred support for victims of forced marriages

Legal approaches to forced marriage

An overview

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I. Introduction

This legislative overview has been developed as a part of the CERV-funded EASY project ("It is never easy to talk about this" – Increasing dialogue, awareness, and victim-centred support for victims of forced marriages) which aims to increase community engagement and dialogue, raise awareness, and develop victim-centred support for victims of forced marriages.

The legislative overview presents the results of comparative desk research on the legal approach to forced marriage (hereinafter, FM) in four European countries: Germany, Spain, Ireland, and Finland. This section provides an introductory overview of the issue including: a) a phenomenological description of FM in the analysed countries; b) a frame of reference for the predominant legal approach to FM in each one; and c) a brief summary of the existing institutional initiatives to address FM in all four systems. The following sections will then examine in greater detail the international obligations undertaken by each of the analysed countries and how they have been translated into their domestic legal systems.

PHENOMENOLOGICAL DESCRIPTION

The phenomenon of FM is a reality in all four of the analysed countries. Public debate on the issue seems to have occurred in all of them, not only regarding the criminalisation of such conduct in the three countries where FM has specifically been classified as a crime, but also as a result of high-profile cases that have shown that Europe is not immune to such episodes, leading to increased awareness of the phenomenon. In Germany, public debate on the issue has increased since the turn of the century, possibly due to growing media interest in FM and honour-based violence in immigrant communities as a result of certain widely covered cases, such as the 2005 honour killing of Hatun Surücü. A 23-year-old woman of Turkish and Kurdish descent brought up in Berlin who had divorced her husband – with whom she had been forcibly married at the age of 16 – and embraced a Western way of life, Surücü was killed by her younger brother for having dishonoured the family (Braun, 2015). The 2022 deaths of the sisters Arooj and Aneesa Abbas, aged 24 and 20, in Pakistan at the hands of their in-laws, presumably instigated by their father from Spain, had a similarly galvanising effect on public awareness in Spain. These two young women, raised near Barcelona, travelled to Pakistan under false pretences. When, once there, they expressed their desire to divorce the men with whom they had been forcibly married and refused to bring them back to Spain, they were killed for having dishonoured their family.

Despite the consensus in the four analysed countries that this reality may be on the rise in recent years, no systematic statistical data are collected on this form of victimisation. Although there are some quantitative data in all the countries, as will be discussed below, the lack of systematisation in the officially collected data suggests that the cases of FM that do surface may be only the tip of the iceberg (Villacampa and Torres, 2021).

The number of detected cases varies across the countries. This can be explained by the differences in population but may also be due to the awareness of front-line professionals in terms of detecting them.

In the most populous of the four analysed countries, Germany, FM is no longer assumed to be a marginal phenomenon limited to major cities such as Berlin, Hamburg, and Frankfurt. Especially during the summer holiday, when families travel to their countries of origin, cases of FM increase rapidly. Although counselling centres in Berlin estimate that there are around 600 cases of FM per year, there could be more (Neue Zürcher Zeitung, 2022). According to a 2011 study by the Federal Ministry for Family Affairs and Senior Citizens (2011) on the extent of FM in Germany, 830 counselling centres in Germany reported that a total of 3443 individuals sought advice on the issue in 2008. In about 40% of the cases, the FM had already taken place; in the remaining cases, there was a threat thereof. Other than the results of that report, there are limited data on the prevalence of FM at the national level in Germany.

Figure 1. FM cases recorded by the German police

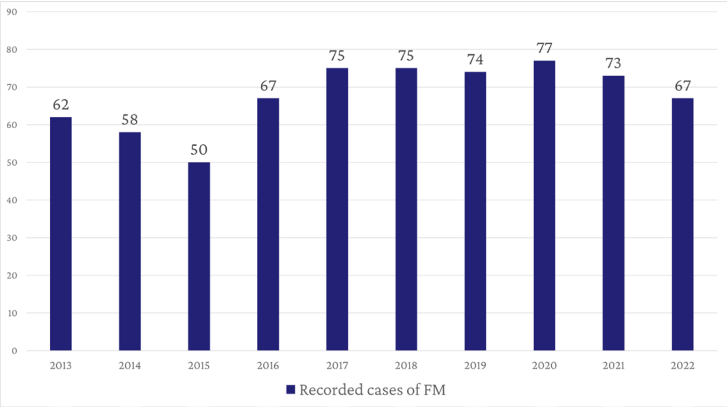


Figure 1 shows the number of cases of FM recorded by the German police between 2013 and 2022. As can be seen, they have been increasing since 2017. According to the Police Crime Statistics (2022), of the 73 cases of FM reported in 2021, 46 were attempted

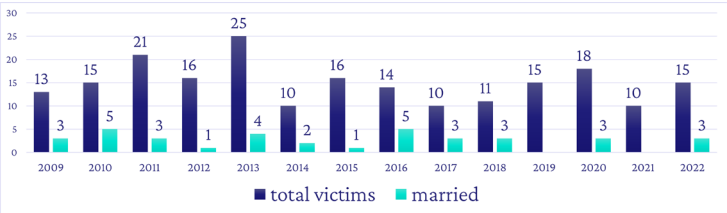
FMs. These cases affected 79 registered victims, 71 of whom were girls and women.

In contrast to the police figures, in its most recent annual report, the NGO Solwodi reported having attended 2,278 initial contacts related to GBV, THB and FM (Solwodi, 2022). Most were by people from African (mainly Nigeria), Eastern European, and South-Eastern European countries. The contrast between the number of victims served and reported cases in Germany confirms that the reported cases are only the tip of the iceberg.

The situation in Spain, the second most populous country studied, is not so different: statistics on the issue at the national level are unsystematic and incomplete. The only official data collected on FM in Spain are police data, and they are collected only by identifying FM as a form of trafficking in human beings (hereinafter, THB). FM has not traditionally been considered or addressed as a form of violence against women in Spain; consequently, its incidence has not been reflected in the official victimisation data included in the Spanish Government Delegation against Gender Violence's monthly statistical bulletins or in the victimisation data obtained through the macro-surveys on violence against women. The most recent such macro-survey, from 2019, includes data on violence against women occurring outside the couple, but no data on FM, even though migrant women are found to report more intimate partner violence than Spanish nationals (28.6% vs 20%). Nor is there any judicial data on FM: the General Council of the Judiciary's Observatory on Gender and Domestic Violence prepares quarterly statistical reports on rulings in cases of gender violence, but these reports do not include data on FM. The only official data on FM in Spain, namely, police data, are those linking this reality to THB, which are compiled by the Centre for Intelligence against Terrorism and Organised Crime (CITCO). Between 2016 (the first year for which there are data) and 2022, CITCO identified only 18 victims of FM (CITCO, 2022), with FM being only the fourth most prevalent form of exploitation of THB victims (after sexual, labour, and criminal exploitation). CITCO collects only the victims' nationality (mostly Romanian), gender (female), and age (mostly minors), as well as the place where they are found and the nationality of the offenders (mostly Romanian). Romanian victims of FM sold by their parents and close relatives are clearly overrepresented in the Spanish police statistics.

More official data on FM in Spain are available in Catalonia, a Spanish comunidad autónoma (autonomous or self-governing region) where the institutional approach to FM was regulated earlier than in the rest of Spain and where FM has always been addressed not as a specific form of THB, as it is in Spain as a whole, but as a manifestation of gender-based violence. The Catalan regional police, the Mossos d'Esquadra, have collected data on FM since 2009, the year that the Protocol for Prevention and Police Intervention in Forced Marriage, a police-based programme that shapes the Catalan police's approach to this phenomenon, was approved. Between 2009 and 2022, the Mossos d'Esquadra had contact with 209 victims of FM, including 113 minors and 96 adults, 173 of whom were at risk of being forced to marry and 36 of whom were already married. Figure 2 shows the breakdown by year.

Figure 2. FM victims detected by the Catalan police by year



The number of women turning to the criminal justice system is dwarfed by that of women coming into contact with third-sector entities specialised in assisting FM victims, such as Valentes i Acompanyades in Catalonia, which reports having assisted 108 women between 2021 and 2023 alone. The figures in Spain also show a large gap between the number of FM victims detected and those who are ultimately registered as such or report the crime, especially when figures from the Spanish police and third-sector organisations are compared.

As for the two least populous countries studied, in Finland the number of FMs identified has increased significantly since 2016 (Jokinen et al., 2022). In this country, such victims are usually identified in the context of human trafficking. The Finnish Immigration Service runs the National Assistance System for Victims of Trafficking under the auspices of the Joutseno reception centre. The number of FM victims admitted into the system has increased annually. For instance, among the women and girls admitted to the assistance system in 2021, FM was the most common form of exploitation, accounting for

42% of cases. In 2022, it was also the most common form of trafficking among women and girls admitted to the assistance system (37%, 72 people). Almost two-thirds of the women had been victimised in another country, mainly their country of origin (National Assistance System, 2022). The NGO Victim Support Finland has also identified a growing number of FM victims: in 2021, their specialised service for victims of THB and labour exploitation had 675 new clients vs. 508 in 2020, of whom 10% were FM victims both years (MTV, 8 March 2022). In 2022, Victim Support Finland identified a total of 30 FM victims (RIKU, 6 February 2023). According to the Finnish police, in 2021 and 2022, 17 cases of FM were investigated as THB or aggravated THB (KRP, 2023). The pattern of a large gap between the number of FM cases investigated by the police and the number of FM victims identified by third-sector organisations is thus also visible in Finland, to the extent that the 2021 National Finnish Anti-Trafficking Plan notes that FM cases are not reported to the police and do not result in criminal justice proceedings (Roth and Luhtasaari, 2021).

The data from Ireland are not very different in terms of showcasing the criminal justice system's inefficiency when it comes to detecting and addressing cases of FM. No information on the issue is included in the data on recorded crime published on the Irish Central Statistics Website. However, according to private communication with its staff, as of Quarter 1 2023, in 2021 and 2022 there were only 5 recorded incidents of FM offences. The statistics reflect when a crime is reported to An Garda Síochána (AGS), the Irish police. No one has been charged or summoned in relation to the reported incidents. In 2016, prior to the criminalisation of FM, it was reported that the Garda National Immigration Bureau was investigating a number of suspected cases of FM involving children as young as 12 years old in which girls were trafficked into the country and coerced into marrying older men. Despite the indication that investigations were initiated, there are no data on whether any arrests were made or prosecutions undertaken. Prior to the introduction of the prohibition of child marriage, 387 minors were thought to have been married at the age of 16 or 17 between 2004 and 2014. In a news report, a state representative of the Department of Justice remarked that 1–2 cases were investigated per year and acknowledged that it could be a hidden practice, making it difficult to measure in Ireland (Akidwa, 2022).

As for the **victims' profile and the observed dynamics of FM**, academic and official research undertaken in the four countries

points to slightly different patterns in each one. It is generally accepted that this phenomenon affects certain communities that have arrived in Western Europe after the corresponding migratory process and that, for reasons such as ensuring cultural-community continuity after the migration process, procuring a better economic future for their daughters, regularising their residential status in Europe, paying off debts, or disciplining the Western lifestyles of their descendants and preventing family dishonour, force mainly girls and young women into marriages they have not chosen (Hansen et al., 2016; Finnish League for Human Rights, 2016; Klemetti and Raussi-Lehto, 2013; Kervinen and Ollus, 2019; Villacampa, 2020; Villacampa and Torres, 2021, Viuhko et al., 2016). However, the phenomenology is relatively changeable depending on the migratory waves affecting each country.

In Germany, FM is often associated with Muslims of Turkish origin. Turks are Germany's largest immigration group and are thus statistically more likely to be affected by the practice (Terre des Femmes, 2022). However, FMs are not found only in Islamic cultures, but also in Buddhist and Hindu societies, as well as in some African and European nations (Braun, 2015). In some cases, these situations affect families who have lived in Germany for decades. Some are not necessarily strict believers but insist on adhering to the moral ideals of their patriarchal country of origin (Kreutzmann, 2022). In many cases, girls and young women have been found to be recurrently coerced into FM by subtle pressure, including repeatedly confronting them with the marriage proposal and telling them that they will learn how to love the person they are supposed to marry (Yerlikaya and Çakir-Ceylan, 2011).

In Spain, the first quantitative study on FM covering the entire Spanish territory was conducted on the basis of an online survey completed by a real sample of 150 entities that responded to a questionnaire sent to a total of 518 entities (Villacampa and Torres, 2020). This quantitative study was followed by qualitative analyses conducted with 34 professionals (Villacampa and Torres, 2021; Torres and Villacampa, 2022), including 14 from the criminal justice system and 20 from the field of victim services, as well as with several survivors (Villacampa, 2020). In addition to confirming the existence of cases of FM in most of the Spanish regions explored, these studies made it possible to establish a victim profile and to determine the dynamics of FMs and how they are experienced by those who suffer them, how these cases emerge, the degree of professional awareness of them, and the

most appropriate way of dealing with them. They confirmed that the groups most at risk of being victimised are women who are minors or very young and, thus, usually still in the care of their parents or adults of reference, mostly from the Maghreb (43%) (with Moroccan being the most common nationality, accounting for 30%), sub-Saharan Africa (25%) (with Gambian and Nigerian being the most common nationalities), and South Asia (9%) (with a clear increase in Pakistani origin according to data on victim services from Valentes i Acompanyades for 2022 and 2023). An additional 7% were Roma, mostly from Romania. Notwithstanding their origins, the victims were mostly (75%) Spanish or had legal residence in Spain. Most of the victims were Muslim (69%), followed by Catholics (3.6%), and by Sikhs, Orthodox Christians, and Hindus (1.8% each).

The coercive mechanisms used to convince the victims to marry are of low intensity, having to do with attachment to tradition and the victim's membership in a certain community, rather than the use of severe coercion. This is consistent with the idea of coercion as a continuum. This idea of a coercion continuum and the role it plays in decision-making has been most extensively addressed in qualitative research (Villacampa, 2020; Villacampa and Torres, 2021; Parella et al., 2023). FM is a practice that is consented to, when not directly encouraged, by the victims' families. Hence, the facts mostly come to the attention of the various entities when the families themselves – finding themselves in a personal and family situation with a certain degree of empowerment and a safe residential situation – come to them seeking help. The cases that surface may thus be, as already noted, just the tip of the iceberg and are detected by the most specialised entities, usually once the marriage has already been contracted and the situation has escalated into family violence. This highlights the need to train professionals to ensure prompt intervention in risk situations. In addition, victims are reluctant to go through the criminal justice system to obtain protection, especially if it requires them to report their own family, although less so when it involves reporting an abusive husband. Thus, in cases where the coercion is not blatant or where the victim has not been objectified, recourse to restorative justice mechanisms may be appropriate.

As for the victim profile in Finland, a Victim Support Finland (2023) report based on an analysis of their client data on cases of THB for sexual exploitation shows that most victims of FM are nationals of Middle Eastern (37%) or Asian countries (23%). There are also na-

tionals of African (16%), Northern European (7%), and other European countries (5%). Some 50% of the victims were in Finland with a residence permit, while 23% were asylum seekers, 9% were Finnish nationals, and 3% were undocumented (Pihlaja and Piipponen, 2023). Most of the victims with residence permits had been granted the permit based on family ties (Pihlaja and Piipponen, 2023). A total of 29% of these victims were underage, which was associated with greater vulnerability and made disengaging from the situation more challenging (Pihlaja and Piipponen, 2023). Other vulnerabilities and risks associated with FM include the threat of honour-related violence, pressure from the community, uncertainties related to residence permits, and a lack of language skills, as well as unawareness of one's rights under Finnish law (Pihlaja and Piipponen, 2023).

In Ireland, it is difficult to determine the main groups affected by FM due to the lack of data on nationality in the cases reported as possible crimes. The groups that frontline workers report as being affected are primarily those for whom arranged marriages are part of the culture, including Afghan, Indian, and Muslim migrants (Akidwa, 2022). Based on a review of judicial review cases relating to international protection in which the issue of FM was noted as impacting the protection applicant in some way, many of those affected were of Nigerian nationality. FM has also been reported in Ireland in relation to members of the Irish Traveller Community in the UK; however, the information on the prevalence of such cases is limited (Bass, 2021), and the Irish Traveller Movement has questioned whether the practice is widespread in this community (Holland, 2015). Early marriage and FMs in some Roma communities have also been reported in Ireland (Pavee Point Travellers Centre, 2012).

As for the dynamics of FM, as noted, most of the cases detected in the four analysed countries can be described as family- and community-led processes (Villacampa and Torres, 2021; Yerlikaya and Çakir-Ceylan, 2011). In such processes, young people and children, particularly women and girls, are steered by their families and adults of reference into marriages that others have decided for them. Violence does not openly surface before the marriage takes place in these cases unless the victim openly refuses to marry. However, in those countries where this phenomenon has been legally addressed as a possible purpose of exploitation in the crime of THB, the dynam-

ics of FM cases have also been characterised as equivalent to the modus operandi in cases of THB, whether as situations of the direct sale of daughters or as cases in which the violence surfaces more clearly. This has been evidenced in Spain, especially in the descriptions of episodes of FM by criminal justice system professionals (Villacampa and Torres, 2021), and Finland. Some of these victims are thus said to have been subjected to considerable physical, psychological, and sexual violence, many underwent economic exploitation, and, in some cases, economic crimes were even carried out in the victim's name (National Assistance System, 2023). Another consequence is that, unlike in family-led FM processes, in these cases, the victim's family is not generally considered to be the perpetrator of the FM, but rather the spouse or someone from the spouse's family (Pihlaja and Piipponen, 2023).

Also related to the dynamics or modus operandi of FM are the different types of FM observed in Finland and Germany in terms of the place of residence of the victims and perpetrators and where the marriage occurs. In Finland, three types of FM have been identified according to these variables (Kervinen and Ollus, 2019; Oikeusministeriö, 2020; Pihlaja and Piipponen, 2023; Toivonen, 2017): a) cases in which one of the spouses has been living in Finland for a long period, travels back to his or her country of origin to marry, and brings their new spouse back to Finland based on family ties; b) couples who have married abroad and moved to Finland as asylum seekers or for other reasons; and c) cases in which the person has grown up in Finland and is sent back to their family's homeland to get married. In Germany, four similar constellations have been described: a) FM in Germany between Germans who are migrants or have a migration background; b) FM abroad of women who, having grown up in Germany, are forced to marry a man from their family's homeland and to live there once the marriage has taken place; c) marriage for an 'immigration ticket', whereby a man from abroad receives a residence permit in Germany through marriage; and d) 'imported' brides, i.e. young women from abroad who are brought to Germany and married to a man living there. These constellations of cases highlight the close relationship between FM and immigration issues, not only because migratory and residential regulatory issues can be important motivations for FMs, but also because, as studies have shown, a legal residence status is a key factor in explaining when victims seek institutional support.

It must thus be addressed as a relevant aspect in any victim-assistance programme to deal with FM victimisation.

LEGISLATIVE APPROACH TO FM

This section will discuss the legislative approaches adopted by the four analysed countries, arising from their international obligations to address FM under the international and regional agreements they have signed. To avoid unnecessary repetition, here it should be recalled only that the Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011 obliges CoE Member States to criminalise FM. However, it adopts a victim-centred approach to this reality, known as the 3Ps policy, which focuses not only on the prosecution of these behaviours, but, above all, on the protection of victims and on their prevention. A fourth P, for co-ordinated policies, was subsequently added, as well.

In keeping with the dictates of this convention, like most European countries, three of the four analysed countries (all except Finland) introduced a specific crime of FM in their respective criminal law systems in the 2010s. Germany criminalised FM through the introduction of a specific crime in Section 237 of the German Criminal Code (hereinafter, German CC) in 2011. Spain was the second of the analysed countries to criminalise FM, introducing FM as a crime against the freedom to act in Article 172 bis of the Spanish Criminal Code (hereinafter, Spanish CC) in 2015. Additionally, human trafficking for the purpose of forcing victims into marriage was included as a specific form of THB in Article 177 bis Spanish CC. Ireland also introduced a specific offence of FM through Section 38 of the 2018 Domestic Violence Act. Finland is the only one of the four analysed countries that has not yet introduced a specific offence of FM. In this country FM is also criminalised, not as a specific offence, but through the crimes of THB, aggravated THB, and coercion. In all four analysed countries, whether or not they have a specific offence of FM, the predominant legislative means of addressing this reality is through criminal law. Their legal approach to FM is thus mainly punitive. Of the aforementioned 3 Ps that make up the 3P policy, the P for prosecution has been the subject of the most extensive legislative development in the analysed countries. As criminal law is the main type of law used to address this reality, the primary options are either specific criminalisation through the incorporation of an offence of FM or predominant recourse to the offence of THB.

This latter option is observed both in those countries that have not specifically criminalised FM (i.e. Finland) and those others (e.g. Spain) that have a specific form of THB for FM, which, incidentally, is what is mainly used by the courts to punish FM.

With regard to the other two Ps of a victim-centred policy for dealing with FM, i.e. prevention and, above all, protection, the analysed countries have adopted legislative initiatives to complete the legal status of victimisation in these cases, although the legal approach of victim protection is less predominant than that of prosecution.

Notwithstanding this predominance of the use of criminal law to deal with FM, which is not ideal, as it can oblige victims to take action against their own families (Villacampa Estiarte, 2019), in Germany, Finland, and Ireland, the national authorities have recently also turned to civil and family law to address the phenomenon. The first of the analysed countries to introduce civil and family law measures was Germany, which, in 2017 adopted the Act to Combat Child Marriages. This act, which entered into force on 22 July 2017, is designed to protect young girls and women, including both German and non-German citizens, from being forced into arranged marriages against their will. In Ireland, the 2018 Domestic Violence Act also included substantive civil law measures to prevent and respond to FM. More recently, Finland passed the Marriage Act (234/1929), which includes a series of measures to respond to FM with civil and family law instruments. In this country, although the discussion about how to better prevent FM has mostly focused on criminalisation, in recent years, the question has arisen of whether FM might be more effectively countered with family law as well. According to a study by the Institute of Criminology and Legal Policy (2017), some Finnish experts have even considered the possibility of nullifying marriage to be more important than criminalising FM as its own offence (Toivonen, 2017).

As for Spain, a clear disparity can be seen between the more punitive national approach to addressing FM adopted by the central government authorities and the more victim-centred one adopted in Catalonia, a region in the north-east of Spain. The national approach was mainly punitive until 2022, when Organic Law 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom (hereinafter, LO 10/2022) was passed. Prior to its passage, Organic Law 1/2004, of 28 December, on comprehensive protection against gender-based violence (hereinafter LO 1/2004) was the basic law for fighting gender-based violence in Spain.

Although it establishes a comprehensive protective legal status for victims of gender-based violence, it did not include FM in the concept of gender-based violence defined in its Article 1 and, thus, was not applicable to FM victims. With the passage of LO 10/2022, a state-level regulation outside the Spanish CC explicitly included FM as a possible manifestation of sexual violence whose victims the law protects (Art. 3). LO 10/2022 has finally adopted the 3P policy, that is, a holistic approach to protecting victims of sexual violence, including FM victims, in Spain. In addition to some criminal measures to address certain forms of sexual violence that had not yet been criminalised – which is not the case of FM – it includes measures for preventing and raising awareness of sexual violence and, in particular, for protecting victims that can be applied to FM victims, mostly of a victim-support nature.

In contrast with the predominantly punitive Spanish national approach in place until 2022, in Catalonia, a victim-centred regulatory and institutional approach to FM was adopted earlier on. In this region, Catalan Law 5/2008, of 24 April, on the right of women to eradicate gender-based violence, adopted a broader concept of violence against women than LO 1/2004 and already included FM as a specific form of sexual violence against women (Art. 4). Since the Catalan law's passage, other Spanish regional laws have also included FM as a form of violence against women, such as the 2018 reform of Law 13/2007 in Andalusia on comprehensive prevention measures against gender-based violence or the 2019 reform of the Comprehensive Law against Violence against Women (Law 7/2012) in Valencia. The inclusion of FM in a law such as the 2008 Catalan one, more oriented towards assistance and more focused on victims' recovery than on punishment (as the Spanish regions are not competent to legislate in criminal matters), meant that the Catalan approach to FM was clearly more victim-centred than the national one.

INSTITUTIONAL INITIATIVES TO ADDRESS FM

FM does not seem to be an institutional priority in the four analysed countries, or, at least, was not until recently. In these countries, the implementation of institutional measures to fight FM, the design of public policies to tackle it, and the provision of economic resources to combat it have yet to become central aspects of their respective po-

litical strategies. This is evidenced by the fact that the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (hereinafter, GREVIO), tasked with monitoring the implementation of the Convention on preventing and combating violence against women and domestic violence, has warned some of these countries of the need to address this phenomenon more extensively. This is the case of Germany, for instance. In its first evaluation report (GREVIO, 2022), GREVIO notes that many German policy measures focus mainly on domestic and sexual violence, while other forms of violence, such as FM or female genital mutilation, do not appear to have received comparable amounts of attention, even though the Convention requires parties to adopt a holistic approach to violence against women encompassing all forms of this violence. The conclusions of GREVIO's first evaluation report on Spain were similar (GREVIO, 2020).

As noted, FM has begun to enter the political arena in the analysed countries. However, the reduced phenomenological analysis of FM and limited understanding of it, coupled with the narrow view of gender-based violence restricted to intimate partner violence that some national policymakers have taken until recently, may have played a role in its reduced institutional visibility. Other factors may also have contributed to the lack of an institutional approach to this reality, in which there is a danger of blaming certain cultures. For example, in the case of Germany, for decades, FM issues were neither publicly debated nor on the political agenda for unclear reasons not unrelated to the fact that such an approach fits the country's past philosophy of minimal interference in the affairs of immigrant families so as to ensure the continued functioning of a multicultural society (Schubert and Moebius, 2006). Moreover, in this country, in the past, the primary concern was that debate on FM in a public forum would discriminate and alienate certain religious or cultural communities living in Germany, thereby contravening immigration and integration policy objectives (Braun, 2015).

The signature of the Council of Europe Convention on preventing and combating violence against women and domestic violence by the analysed countries, coinciding with the 2015 refugee crisis, gave rise to the first steps to address FM institutionally (Hong, 2019, 2020; Olsson, 2019). However, the intensity with which this reality is dealt with institutionally varies across the analysed countries, seeming to

have gained greater prominence in Germany, some Spanish regions, and Finland, while receiving less importance in Ireland.

In Germany, the Parliament recently published a document referring to honour-related violence and oppression (2023) that classifies FM as a specific manifestation of honour-based violence against women and girls. Also, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth published a handout on FM (2022), primarily aimed at professionals working in child and youth welfare, providing information about the situation in which victims find themselves and explaining the support options available for them.

In Spain, how FM is institutionally addressed also varies depending on whether the focus is the national or Catalan institutional approach. The national strategies that had been approved in Spain to fight gender-based violence were strongly focused on intimate partner violence and barely mentioned FM. The 2013–2016 State Strategy for the Eradication of Violence against Women, which was in fact applied until November 2022, was the first to mention it, albeit without providing for specific measures to address it beyond the need to consider the special vulnerability of migrant women in this situation. The recently approved 2022–2025 State Strategy to Combat Male Violence, adopted following GREVIO suggestions, is more comprehensive, encompassing all forms of gender-based violence, including FM. However, it is more focused on fighting sexual violence against women, especially sex trafficking and exploitation, than on addressing honour-based violence and FM. In contrast, in Catalonia, FM was institutionally addressed as early as 2009, when the Catalan government's Security Programme against Male Violence published the Protocol for Prevention and Police Intervention in Forced Marriage, a police-based programme that provides victim-centred guidelines to the police for approaching this reality. Subsequently, in December 2014, in Girona, an area of Catalonia with some sub-areas thought to have a high incidence of FM, a local protocol for the approach to FM was approved. This local protocol, which adopts a clear welfare- and victim-centred approach, was the basis for the more recent approval, in March 2020, by the Generalitat of Catalonia (the Catalan government) of its Protocol for the prevention and approach to FM in Catalonia.

For more than three years, this 2020 Protocol, currently under review, has set the guidelines for institutional action on FM in Catalonia. Its objective is to establish a framework for cooperation and an intervention circuit including all the professionals involved in preventing, detecting, and intervening in these situations by designing a strategy consisting of four phases: prevention, detection, care, and recovery. The protocolisation of intervention in cases of FM adopted by the Catalan government is being adopted as a local strategy in some places in Catalonia itself. Various counties with a high incidence of FM cases (e.g. La Garrotxa, Maresme, Vallés Occidental) have launched processes to protocolise their interventions. This approach culture is also spreading to other parts of Spain, such as Navarre, which has begun to draw up an approach protocol following the Catalan government's model.

In Finland, various ministerial initiatives have been adopted since 2015 to address FM. As the specific crime of FM has not yet been introduced in this country, these measures are heavily focused on the opportunity to introduce this crime and on the breadth of the concept of FM. To avoid unnecessary repetition, the specific content of these initiatives will be discussed in Section III of this report, which addresses the concept of FM.

Finally, in Ireland, although the Third National Strategy on Domestic, Sexual and Gender Based Violence, which sets out how the state will address these violent behaviours between 2022 and 2026, does not explicitly mention FM, it does recall Sustainable Development Goal 5, one of whose targets is the elimination of harmful practices such as child, early, and forced marriage or female genital mutilation. In addition, the protection of FM victims, who are explicitly mentioned among vulnerable crime victims, seems to be a priority for the Irish Minister for Justice, who in a 2023 written answer to Parliament, indicated that the Department of Justice is developing legislation to implement the recommendations of the O'Malley Review to strengthen the rights of victims of sexual offences and is also considering ways to strengthen protections for other vulnerable victims, such as FM victims, to minimise potential re-traumatisation and intimidation during trials, particularly when they testify as witnesses.

II. INTERNATIONAL LEGAL OBLIGATIONS

Germany, Spain, Finland, and Ireland have signed and ratified most of the international conventions and legal instruments that explicitly or implicitly impose an obligation to address FM and set a minimum legal age to marry.

The dates of signature, ratification, and entry into force of these regulatory documents in each of these countries are shown in Table I.

Table I.

Document	Spain	Germany	Finland	Ireland
CEDAW	Sig.: 17/07/1980	Sig.: 17/07/1980	Sig.: 17/07/1980	Sig.: 23/12/1985
	Rat.: 16/12/1983	Rat.: 10/07/1985	Rat.: 04/09/1986	Rat.: 23/12/1985
ICCPR	Sig.: 28/09/1976	Sig.: 09/10/1968	Sig.: 11/10/1967	Sig.: 01/10/1973
	Rat.: 13/04/1977	Rat.: 17/12/1973	Rat.: 23/03/1976	Rat.: 08/12/1989
Marriage Consent	Sig.: 15/04/1969	Sig.: 07/02/1969	Sig.: 18/08/1964	No
	Entry.: 19/07/1969	Rat.: 09/07/1969	Rat.: 18/08/1964	No
CRC	Sig.: 16/01/1990	Sig.: 26/01/1990	Sig.: 26/01/1990	Sig.: 30/09/1990
	Rat.: 30/11/1990	Rat.: 06/03/1992	Rat.: 20/06/1991	Rat.: 28/09/1992
CoE THB	Sig.: 09/07/2008	Sig.: 17/11/2005	Sig.: 29/08/2006	Sig.: 13/04/2007
	Rat.: 02/04/2009	Rat.: 19/12/2012	Rat.: 30/05/2012	Rat.: 13/07/2010
	Force: 01/08/2009	Force.: 01/04/2013	Force: 01/09/2012	Force: 01/11/2010
	Sig.: 11/05/2011	Sig.: 11/05/2011	Sig.: 11/05/2011	Sig.: 05/11/2015
Istanbul Convention	Rat.: 10/04/2014	Rat.: 12/10/2017	Rat.: 17/04/2015	Rat.: 08/03/2019
	Force: 01/08/2014	Force: 01/02/2018	Force: 01/08/2015	Force: 01/07/2019
EU Directive	No need to be signed	No need to be signed	No need to be signed	No need to be signed

Notes:
CEDAW: UN Convention on the Elimination of All Forms of Discrimination against Women of 1979.
ICCPR: UN International Covenant on Civil and Political Rights of 1966.
Marriage Consent: UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962.
CRC: UN Convention on the Rights of the Child of 1989.
CoE THB: Council of Europe Convention on Action against Trafficking in Human Beings of 2005.
Istanbul Convention: Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011.
EU Directive: Directive 2011/36/EU, on preventing and combating trafficking in human beings and protecting its victims.

Under human rights law, forcing someone to marry is a human rights violation. As UN Member States and signatories to numerous treaties and conventions concerning fundamental rights, the four analysed European countries are obligated to protect the human rights of their citizens. According to Article 16 (2) of the Universal Declaration of Human Rights, marriage shall be entered into only with the 'free and full consent of the intending spouses'. Since the adoption of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESR), which, together with the Declaration, are often referred to as the International Bill of Human Rights, the obligation that marriage can only be entered into with free and full consent of the future spouses has been enshrined in international treaty law. In fact, the first two UN conventions listed in Table I, in force in all the analysed countries, guarantee the right of any human being to enter into a marriage only with his or her free and full consent (Arts. 16 CEDAW and 23 ICCPR). Under Article 16 CEDAW, often described as the International Bill of Rights for Women, States Parties shall ensure, on the basis of equality of men and women, 'the same right freely to choose a spouse and to enter into marriage only with their free and full consent'. Article 23.3 ICCPR provides that 'no marriage shall be entered into without the free and full content of the intending spouses'.

As for the minimum age to marry, the four analysed countries have also signed and ratified other conventions that impose on States Parties the obligation to take legislative action to specify a minimum age for marriage and prohibit the legal entering into of a marriage by a person under this age, except in case of a dispensation from a competent authority. Such a rule is established by Article 2 of the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962, signed and ratified by three of the four countries, with the exception of Ireland. Article 1 of this convention also provides that 'No marriage shall be legally entered into without the full and free consent of both parties (…)', meaning that no person can be compelled to marry or to consent to a marriage that he or she is not old enough to enter into. Although this convention, having been approved more than fifty years ago, does not set a concrete minimum age to marry, its provisions can be interpreted in view of what is established under the more contemporary Articles 16 CEDAW and 1 of the 1989 UN Convention on the Rights of the Child, which are in force in all

four of the countries. As noted, Article 16 CEDAW establishes the obligation for the states parties to ensure the same right of women and men to enter into marriage only with their free and full consent, adding that 'the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory'. Under Article 1 of the UN Convention on the Rights of the Child[1], 'a child means every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier'. If the provisions of these three conventions are combined, it can be concluded that the minimum age for valid consent to marriage in the four analysed countries is 18, with one exception in Spain, as will be discussed below. Furthermore, Article 24.3 of the Convention on the Rights of the Child is considered to implicitly address child marriage when it provides that 'States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children'.

Of the international legal instruments listed in the table above, the one that most clearly establishes the prohibition of FM is the Istanbul Convention, in force for all four of the analysed countries, Article 37 of which explicitly addresses this issue. Under this article, '1. Parties shall 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' and '2. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter a marriage is criminalised'. However, as noted, this convention also adopts a victim-centred approach to this reality, assuming a 3P policy, that is, one not only based on prosecution, but also, and mostly, on the protection of FM victims and prevention.

FM can be closely linked to THB, as escaping from an FM by leaving the family home can put teenagers and very young adult women at clear risk of being trafficked or even because some victims enter an FM as a consequence of a previous process of human trafficking, for instance, in cases in which they have been sold by their parents to their husband or the husband's family. Despite this close relationship, the Convention on Action against Trafficking in Human Beings does not refer to FM. Only Directive 2011/36/EU does, albeit not explicitly, when

[1] This treaty has also been signed by all four of the countries, but Ireland is not a signatory to the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution, and child pornography. The UN Special Rapporteur on the sale and sexual exploitation of children indicates that child marriage may be considered as the sale of children for the purpose of sexual exploitation in violation of this Optional Protocol and of Article 35 of the Convention on the Rights of the Child. This is why the Irish Criminal Law (Sexual Offences and Human Trafficking) Bill 2023, currently before the houses of the Oireachtas, proposes giving effect to this Optional Protocol.

defining the concept of human trafficking in its Article 2.1. The directive's preamble clarifies that a process of human trafficking to force someone to marry can be considered implicitly encompassed by this definition, which reflects a broad concept of exploitation, insofar as the FM of which the exploitation consists fulfils the constitutive elements of THB.

Unlike Directive 2011/36/EU, which can be directly enforced within the EU countries, the international treaties listed in Table I need to be signed and ratified by the States Parties to be enforced. Even then, the enforceability of these texts can vary depending on the country. The international obligations related to FM, particularly those issued by the UN, grant Member States discretion on how best to implement and comply with the obligations to protect their nationals from this practice. This means that, in those states in which the ratification and official publication of the treaty suffices for international legal texts to have internal effects, such as Spain, the treaty's provisions can be directly enforced in their territory. However, in countries in which a distinction is made between self-executing international law (which has the same effect as national law) and non-self-executing treaties (where states can exercise discretion concerning their obligations), such as Germany (Braun, 2015), their provisions must first be transposed into domestic law. Since UN instruments did not obligate Member States to criminalise acts relating to FM, prior to the adoption of the Istanbul Convention, which does clearly establish this obligation, some of the analysed countries had a certain amount of discretion in deciding how and when to respond to FM with legislation.

III. CONCEPT OF FORCED MARRIAGE

The concept of FM is not settled. Because it is defined as a marriage concluded without the consent of one or both partners (European Union Agency for Fundamental Rights, 2014), traditional conceptualisations of FM recognise only cases in which coercion or duress is used to force one or both parties to marry, thereby differentiating the practice from arranged marriage (Anitha and Gill, 2011; Home Office, 2000; HM Government, 2010). According to these traditional conceptualisations, FM differs from arranged marriage, in which both parties consent to receiving the assistance of their parents or a third party in choosing a spouse (Anitha and Gill, 2011; Home Office, 2000; HM Government, 2010). However, such cases are increasingly understood within a framework of gender-based violence (Bunting et al., 2016; Gill and Anitha, 2011) and through an intersectional lens, according to which processes of power and subordination in the postmodern society are explained not only by the binary system of sex and gender, but by a multiplicity of factors, such as race, class, and gender (Crenshaw, 1991). When such an approach is applied to FM, the concept of FM adopted is less attached to the binary conceptualisation of coercion and consent (Anitha and Gill, 2011) and, thus, results in a more comprehensive definition, making the boundaries between this category and that of arranged marriage more fluid. This more contemporary conceptualisation of FM accepts that methods of force need not necessarily involve violence or the threat of violence but could also include means of coercive control (Anitha and Gill, 2009, 2011). Moreover, in addition to being forced to enter into a marriage against their will, victims may continue to endure coercion throughout its term, which could also prevent any potential termination (Gangoli et al., 2011). Furthermore, if FM is understood as a process, that is, as a pattern of behaviour rather than an event, among other possible consequences of the assumption of this broader concept of the phenomenon, it can also be considered to encompass cases in which women have not yet been forced into marriage but are at risk of being so (Chantler and McCarry, 2020).

The concept of FM generally followed in the four analysed countries varies depending on whether the respective country adopts a legal concept of FM based on a specific offence of FM. In those countries where the main legal reference from which the concept of FM is derived is the Criminal Code, the concept of FM is attached to the traditional concept described above. As noted, this conceptualisation clearly differentiates it from arranged marriage and reflects the implicit and restrictive concept of FM that Article 37 of the Istanbul Convention provides must be criminalised by States Parties.

This is the case of Spain, where the only legal concept of FM included in state-level legislation is that which can be deduced from Article 172 bis Spanish CC. Beyond the Spanish CC, Article 3.1 of LO 10/2022 includes FM as a possible manifestation of sexual violence but gives no hints as to how it should be conceptualised. Article 172 bis Spanish CC likewise does not offer a proper definition of FM, but rather includes as a classified conduct that which 'with serious intimidation or violence compels another person to contract marriage', as well as that consisting of using such means or deception to force another person to leave Spanish territory or not return to it in order to force them to contract the marriage. Hence, it can be deduced that the concept of FM is legally identified with marriage contracted without the consent or against the will of at least one of the contracting parties as a result of the use of physical or psychological force – especially, serious intimidation.

At the regional level, not all Spanish regional laws that specifically refer to FM as a form of violence against women define the concept. The first such law to include such a definition was Catalan Law 5/2008, Article 4 of which refers to FM as a manifestation of sexual violence against women but does not provide a specific definition of it. Other contemporaneous regional laws did not even refer to FM. For example, Aragonese Law 4/2007, on Prevention and Comprehensive Protection for Women Victims of Violence, does not mention it. Subsequently, other regional laws that have followed Catalonia's example and included FM as a form of violence against women have also introduced definitions. For example, Article 3.4.j) of Andalusian Law 13/2007 has, since 2018, provided that early or forced marriage should be understood as 'a marriage to which the woman has not given her free and full consent, either because it is the result of an agreement between third parties, unrelated to her will, because it is entered into under conditions of intimidation or violence, or because she has not reached the age legally established to give such consent or lacks the capacity to give it, even if at the time it is entered into, she has not been incapacitated by a court'. Likewise, Article 3.7 of Valencian Law 7/2012 has, since 2019, included FM as a manifestation of violence, defining it as 'forcing a woman or girl to contract marriage, including through the use of deception to take her to territories where she is forced to contract it'. In short, aside from the lack of distinction in the definitions of arranged and forced marriage included in the An-

dalusian law, in regional legislation, the prevailing concept of FM also seems to identify it as that occurring without the consent or against the will of at least one of the contracting parties as a result of the use of physical force or intimidation.

The case of Germany is similar to that of Spain. Since the introduction of the offence of FM in Section 237 of the German CC in 2011, German law has defined FM as a marriage into which a third party coerces the victim through the use of force or by threats of appreciable harm. An FM is characterised by the lack of free will on the part of the victim. Consequently, in Germany, too, a clear distinction is drawn between FM and arranged marriages, in which, unlike in FMs, the future spouses may reject the partner proposed by relatives, friends, or marriage brokers. Only FM is criminalised, whereas arranged marriage is considered a respected cultural tradition (Braun, 2015). The specific criminal offence is so focused on forcing someone to marry that some German academics claim it should not have been called 'forced marriage', which replicates the language commonly used to describe this phenomenon, but 'forcing someone to marry', which more accurately describes the criminalised behaviour (Braun, 2015). The Act to Combat Child Marriage in Germany, adopted in July 2017, amending the German Civil Code to increase the legal age to marry and declaring invalid those marriages entered into by anyone who has not yet reached the majority of age, does not define FM and, thus, does not change the restrictive concept of FM implicitly adopted on the basis of the German CC. However, since it does prohibit child marriage, it is easier to consider it a form of FM in Germany, even when it is only a religious or traditional act without civil effects, since the Act to Combat Child Marriage amended the 2007 German Civil Status Act to introduce an administrative offence consisting of participating in or witnessing such a ceremony. As a result, Germany has a slightly broader concept of FM, which also includes religious ceremonies, albeit only when they involve minors.

Ireland, too, has generally adopted a narrow concept of FM that adheres to its traditional characterisation for its criminal regulation, although one that is slightly broader than in Spain and Germany. This country is no exception among the four analysed here, as in Ireland, too, FM is regarded as the term used to describe a marriage to which one of the parties did not consent. In fact, Ireland criminalised FM though the passage of the 2018 Domestic Violence Act (Section 38

(1)), which introduced the offence of causing another person to enter into an FM. Under it, a person commits an offence if he or she engages in 'relevant conduct' for the purpose of causing another person to enter into a ceremony of marriage, where relevant conduct means violence, threats, undue influence, or any form of coercion or duress. Based on the means of commission included in the offence, again, it can be deduced that FM is considered to be only that entered into as a result of the use of physical or psychological violence. However, some have argued that the legal concept adopted in this country may be slightly broader than that adopted in Spain and Germany as it also refers to 'undue influence' and 'any form of coercion or duress' beyond violence or threat as a way of forcing another to enter into a marriage. Besides, Section 38 (11) clarifies that a "ceremony of marriage" means any religious, civil or secular ceremony of marriage, whether legally binding or not, so religious and traditional ceremonies are also included in the criminal offense.

Additionally, child marriage, i.e. marriage of a person under 18, has been prohibited in this country since 1 January 2019. As a result, marriages entered into after that date by a person under 18 can be considered FMs, as it is understood that a child cannot consent to a marriage.

The restricted legal concept of FM adopted mostly in Spain and Germany and to a lesser extent in Ireland may have led academia and even the institutional sphere in these three countries to adopt a narrow way of conceptualising it. For instance, this is the case of some Spanish scholars, who agree that FM – in which the lack of consent or contrariness to the will of the contracting party is caused by violence or intimidation – differs from arranged marriage – in which both parties consent to receiving the assistance of their parents or a third party in choosing a spouse (De La Cuesta, 2015; Torres, 2015; Trapero, 2016; Igareda, 2017; Alcázar, 2013). From an institutional point of view, in Spain, for example, the 2016 Spanish Agreement Against Gender-based Violence and the 2022–2025 State Strategy to Combat Gender Violence are based on a narrow conception of FM. However, even in Spain, Germany, and Ireland, there are also voices in academia calling for the need to adopt a broader and more contemporary conception of FM, in line with that supported by the authors mentioned at the start of this section, and challenging the criminal law approach preferentially adopted so far. In Spain, such an understanding has

been expressed by Villacampa and Torres (Torres and Villacampa, 2022; Villacampa, 2020, 2022; Villacampa and Torres, 2020, 2021). In Germany, Braun (2015) states that, while breaking the decades-long silence on FM in this country can be considered a positive development, the effectiveness of German legislation criminalising FM alone is dubious, as the repressive measure seems unlikely to afford victims of FM ample protection. In Ireland, too, although academic consideration of FM is limited, likely due to the limited data available on it in this country, scholars such as Susan Leahy (2018, 2019) are challenging the narrow understanding of this phenomenon and the exclusively criminal law approach, suggesting, as the other academics mentioned in this paragraph do, that tools such as FM protection orders be introduced, similar to those introduced in England and Wales. Likewise, from an institutional viewpoint, in Spain, for example, the 2020 Protocol for the Prevention and Management of Forced Marriage in Catalonia defines FM as a marriage to which at least one of the two parties has not freely consented.

The case of Finland is different from that of the three other countries described so far. Here, the lack of a strict legal concept of FM implicitly derived from the Finnish CC that might constrain other understandings – since this country has not yet introduced a specific offence of FM – may have favoured broader academic and institutional conceptualisations of FM. Although civil law measures were recently adopted for annulling FMs that utilised a narrow concept of it – identifying it as a situation where a spouse has not given his or her consent to the marriage out of his or her free will but because someone forced him or her to consent – this does not seem to have strongly influenced the generally accepted concept of the phenomenon in the country. At the same time, given that FM is usually criminalised as a form of THB, the concept of FM sustained here is closely linked to that of human trafficking.

On the one hand, the Finnish Ministry of Justice guidelines on FM show a broad understanding of the phenomenon. According to these guidelines, FM is rarely a single act, but rather a series of actions and circumstances that may have continued for several years (Oikeusministeriö, 2020). The victim may be pressured physically, psychologically, and/or financially, and the use of force and threats may also be subtle. Furthermore, the threat may be collective in the sense that the victim fears for the hatred or abandonment of the

whole community. In cases involving minors, a child may have agreed to the marriage or even perceived it as their responsibility. Consequently, the guidelines recognise that it may be difficult for a minor to leave the marriage if, for instance, they see no other alternatives (Oikeusministeriö, 2020).

On the other hand, an action point in the government programme of the previous Finnish government (the Marin cabinet, 2019–2023) put into motion an assessment of the need to criminalise FM. This resulted in a memorandum released in 2021 (Oikeusministeriö, 2021), which sustained that FM and related actions are covered under the current Finnish CC by the provisions relating to THB, aggravated THB, and coercion. One of the suggestions made in the assessment was to further clarify the related human-trafficking legislation, which encompasses FM by referring to 'conditions contrary to human dignity'. The separate provision suggested would mean adding an explicit definition of FM under Chapter 25 Section 3 of the CC, which covers THB (Oikeusministeriö, 2023, 10). The memorandum was also circulated for comments among relevant groups, persons, and organisations (Oikeusministeriö, 2023). Most of the responses were focused on the need to make the current legislation more explicit and on adding a separate provision to the Finnish CC. However, some of the respondents considered that any future legislation on FM should only be applied when the marriage is legally binding and valid. Others argued that the legislation should also cover unofficial marriages such as religious unions, which have not been contracted in a legally binding manner, as well as situations in which one spouse is not able to leave a marriage or is forced to stay in it (Oikeusministeriö, 2023).

Finally, the new government programme set by the Finnish government elected in June 2023 mentions FM several times through multiple action points. Beyond the commitment to take action to further clarify the punishability of FM in criminal law and to adhere to the functionality and effects of the new legislation passed in Finland on the annulment of FMs, the new programme mentions unofficial marriages, referring to those based on a religious or cultural pact as opposed to an official marriage recognised by Finnish law. The action point is intended to help people who are forced into such marriages. The government programme states that it is especially important to influence the attitudes and views on FM in the cultural and religious communities in question, defining raising awareness and helping vic-

tims access support services as relevant points of action (Valtioneuvosto, 2023, 194). It also includes an action point related to FM on the advisability of investigating whether coercive control needs to be criminalised, as well as various actions to be taken to better address THB (Valtioneuvosto, 2023, 196, 205), which is strongly related to FM in Finland.

IV. CRIMINAL LAW APPROACH TO FORCED MARRIAGE

As indicated above, all four countries have largely taken a criminal law approach to FM. Indeed, as seen in the examination of the concept of FM none of them has a non-criminal law defining what is or is not FM. Instead, it is necessary to turn to criminal legislation to define the concept of FM.

FM AS A SPECIFIC OFFENCE

Three of the four countries have criminalised FM as a specific offence. Only Finland has not, choosing instead, as described below, to punish it through a common crime.

In Germany, the practice of forcing a person to marry against his or her own free will was not explicitly criminalised and did not attract much political attention until the turn of the century. Since the mid-2000s, however, the German Parliament has enacted several laws concerning FM, possibly due to increased public and media interest in honour-related gender violence in immigrant communities.

Prior to the introduction of a specific offence, the act of forcing someone to marry had been punishable as a form of coercion under Section 240 of the Strafgesetzbuch (hereinafter, StGB). However, in 2011, that law was repealed, and the German Parliament made FM a specific criminal offence in its own right. This resulted in a new section in the German CC, Section 237 StGB, which defines FM as a marriage into which a third party coerces the victim by force or by threat with appreciable harm. A FM is therefore characterised by the lack of free will on the part of the victim to enter into a marriage.

The German regulation of the issue gives rise to two main issues. The first has to do with the means regulated under Section 237 StGB. As noted, only the most obvious FM cases are criminalised, not those involving the use of more subtle means. The second concerns the definition of 'marriage', which has been the subject of debate in academic scholarship (Braun, 2015). The significance of the question becomes evident when one considers the findings of a 2011 study commissioned by the Federal Ministry for Family, Senior Citizens, Women, and Youth, which revealed that more than thirty percent of the FMs examined in the study were solely religious unions lacking legal recognition in Germany (Mirbach et al., 2011). There is no indication that the German Parliament intended to encompass relationships resembling marriages yet lacking formal recognition within Germany's legal framework within the scope of the criminal statute. Consequently, coercing an individual into an exclusively religious or traditional marriage may arguably not result in criminal liability un-

der German law on FM. Such conducts could, however, potentially be prosecuted as a coercion (Braun, 2015).

The second conduct classified as a criminal offence under Section 237 of the German CC pertains to situations in which an individual, with the intent of facilitating an FM, forcibly, through the threat of severe harm or via deceptive means, either transports or induces another person to travel to a territory beyond the jurisdiction of the German CC or prevents that person from returning from such a territory. With respect to the second conduct, it is worth noting that not only is the offender punished in cases involving violence or intimidation but also when deception is used.

As observed, German lawmakers did, in fact, regulate FM in accordance with the country's obligation under Article 37 of the Istanbul Convention. However, Article 46 of the Istanbul Convention mandates States Parties to introduce an enhanced penalty for FM when victims are minors, a provision not yet incorporated into the German CC. Currently, in Germany, FM is punishable by imprisonment ranging from six months to five years. For less severe cases, the prison sentence can be reduced to a maximum of three years or a fine may be imposed as an alternative form of punishment.

In addition to the criminal offence, German law punishes, as an administrative offence, the religious pre-marriage ceremony, and all traditional acts aimed at establishing a permanent bond between two persons comparable to marriage by minors are prohibited (Section 11, paragraph 2, German Civil Status Act) and punishable by a fine of up to 5,000 euros for all parties involved (Section 70, paragraphs 1 and 3, German Civil Status Act).

As for Spain, the first state-level act to regulate FM was Organic Law 1/2015, of 30 March, which amended the Spanish CC. Specifically, it introduces a new criminal offence (Art. 172 bis Spanish CC) within the Spanish CC. Art. 172 bis establishes: 'Anyone who with serious intimidation or violence compels another person to enter into marriage shall be punished with imprisonment of six months to three years and six months or with a fine of twelve to twenty-four months[2], depending on the seriousness of the coercion or the means used'.

Consequently, this offence is designed to penalise any person who compels another individual to enter into marriage against their will, as long as one of the two methods specified within the offence itself is employed in this classified conduct, i.e. serious intimidation or violence.

[2] In Spanish criminal law, the fine is determined in months. In each specific case, based on the economic capacity of the convicted individual, the fine is then converted into a monetary amount.

As for the criminalisation of the offence in question, the academy has criticised that its inclusion was not necessary given that the conduct described was previously punishable through generic offences, such as threats or coercion (Alcázar Escribano, 2023; Torres Rosell, 2015; Trapero Barreales, 2019; Villacampa Estiarte, 2018). This is evidenced by convictions for the offence of threats in court cases prior to the express criminalisation of FM (Alcázar Escribano, 2023). In fact, in some judgments prior to 2015, both the parents and the husband were convicted not only for the crime of FM, but also for other crimes committed during the duration of the marriage, such as ill-treatment, crimes against sexual freedom, or minor injuries (e.g. Supreme Court Judgments 1399/2009 and 992/2010). The explicit classification of the crime of FM even gives rise to the paradox that threatening someone with an FM can be considered more serious, and therefore more punishable, than conducting the FM itself (Alcázar Escribano, 2023), as will be discussed later.

As with the German FM offence, the first problem raised by the FM offence defined by the 2015 Spanish law is that the scope of the offence does not include any other means of commission beyond violence or serious intimidation. This requirement limiting the means of commission, coupled with the fact that they must occur prior to the celebration of the marriage, will exclude all victims who are forced to marry without the use of such means from criminal protection, which, as can be deduced from empirical research carried out in Spain, is the majority of cases (Torres Rosell, 2015; Villacampa and Torres, 2019; Villacampa Estiarte and Torres Rosell, 2019), especially those involving younger victims or victims without legal residence status in the country (Torres Rosell, 2015; Villacampa and Torres, 2019). This fact has also been criticised by Spanish criminal law scholars from a theoretical point of view (Alcázar Escribano, 2023; Marín de Espinosa Ceballos, 2017; Torres Rosell, 2015, 2022; Trapero Barreales, 2019; Villacampa Estiarte, 2018). In these cases, when the use of violence or serious intimidation as a means of forcing the victim to marry does not exist or cannot be demonstrated, it does not mean that the conduct cannot be criminally prosecuted, but rather that it cannot be prosecuted as the crime of FM (Art. 172 bis Spanish CC). Instead, the generic offences of threats or coercion must be used (Trapero Barreales, 2019).

Legal scholars have also raised several concerns regarding the

limitation of the offence solely to cases in which a marriage with legal implications is performed, disregarding other analogous forms of unions conducted through rituals that do not have legal consequences (Alcázar Escribano, 2023; Torres Rosell, 2015; Trapero Barreales, 2019). This limitation has been criticised as insufficient to cover all situations in which FM occurs. Moreover, it is argued that FM goes beyond mere legal formality and that its essence lies in the imposition and coercion exerted on one (or both) of the parties involved in the marital union (Torres Rosell, 2015). The scholars thus argue that the criminalisation of the offence should instead be broadened to cover all forms of marriage, including analogous ones (Torres Rosell, 2015). The aim is to guarantee comprehensive protection for victims and effectively punish any coercive act related to marriage, regardless of its form or legal recognition. This broader interpretation of the concept of marriage, however, has not been accepted by the courts. Although there have been very few cases concerning the crime of FM, the courts have chosen to understand marriage solely as that which is legally recognised in Spain. Consequently, Roma marriages, for example, are excluded from the criminal definition (see, e.g., Case 229/2019 of the Huelva Provincial Court or Case 211/2021 of the High Court of Justice of Andalusia). In any case, the celebration of the marriage is understood as key for the offence to have taken place (Trapero Barreales, 2019). Thus, if the marriage is not celebrated, a conviction for attempted FM would be possible. There is also the possibility of resorting to the offence of coercion (Art. 172 Spanish CC) or even, where applicable, that of threats, the penalties for both of which are more serious than those for the offence of attempted FM (Torres Rosell, 2015).

Another relevant issue falling outside the definition of the offence of FM is cases in which the attack on the victim's freedom does not occur at the time the marriage is celebrated, but in the context of the marriage itself or in the stage of marital break-up (Torres Rosell, 2015; Trapero Barreales, 2019). In these cases, the offence of FM is not applicable, although under the Spanish CC someone could be charged with coercion.

Together with the act of the FM itself, the second paragraph of the same article of the Spanish CC punishes anyone who uses violence, serious intimidation, or deception to force another person to leave Spanish territory or not return to it with the aim of forcing them to enter into an FM. In contrast to FM, lawmakers' wording of this

provision includes deception as a means of commission, in addition to violence or serious intimidation. Its inclusion makes more sense considering that in many cases an alleged family trip or holiday is used to force the victim to enter into an unwanted marriage once outside the country of residence. Legally speaking, this second offence is basically a literal transcription of Article 37 of the Istanbul Convention (Trapero Barreales, 2019). Through this new offence, what is actually a preparatory act for FM is punished as a crime (Marín de Espinosa Ceballos, 2017; Torres Rosell, 2015). The main challenge lies in its practical applicability. Thus, if violence or intimidation is used, the conduct could be considered an offence of threat (Art. 169 Spanish CC), which has a higher penalty than the offence of FM itself. In addition, Article 177 bis Spanish CC includes FM as one of the purposes of THB, which could entail the application of that offence. If a person is transferred for the purpose of being married against his or her will, the act could be considered an offence of THB. For it to be criminalised as such, the presence of one of the established criminal means, such as deception, violence, intimidation, or abuse of a position of vulnerability, would be sufficient. If the victim is a minor, none of these means would be necessary for it to be considered a human trafficking offence (Torres Rosell, 2022). On the other hand, trafficking still incurs significantly higher penalties than those provided for in cases of FM, with penalties of up to eight years in prison for the basic offence.

Lastly, with regard to the elements of the offence, Article 172 bis, paragraph 3, Spanish CC introduces an aggravated offence for cases involving minor victims. However, even in such instances, the presence of violence or serious intimidation surprisingly remains a prerequisite to establish the commission of the offence (Torres Rosell, 2015; Trapero Barreales, 2019). Conversely, the offence does not include any specific provision for cases in which FM constitutes an act of violence against women. Nevertheless, one can still rely on the generic aggravating circumstance outlined in Article 22 of the Spanish CC, which appropriately increases the penalty when a criminal act is committed due to the victim's sex or gender.

As noted above, another significant concern has to do with the penalties for FM. The offence, categorised among the offences against the freedom to act, establishes a penalty almost identical to that for the generic offence of coercion under Article 172 Spanish CC, differing only in the maximum prison term, which is increased by six months

(from three years to three years and six months). Notably, no minimum requirements are established by the international standards mandating the criminalisation of this phenomenon. The Istanbul Convention does not specify a minimum penalty, nor does it mandate that the penalty should be a prison sentence or a fine, leaving such decisions to the discretion of the lawmakers of the States Parties. Under Article 45 of the Convention, sanctions must be 'effective, proportionate, and dissuasive, according to their severity', and states may adopt additional measures such as monitoring or surveillance of the convicted person or the loss of parental rights. However, the imposed penalty of imprisonment ranging from six months to three and a half years, with the alternative of a fine, raises concerns as it appears insufficiently effective and proportionate, particularly when compared to the penalty stipulated for the generic offence of coercion (Salat, 2020). Additionally, Spanish lawmakers have not fully considered the recommendations outlined in the regulations approved by the Council of Europe, which suggest implementing additional measures to safeguard the rights and protection of victims (Salat Paisal, 2019; Villacampa Estiarte, 2018). In this sense, although the offence of FM is one of those provided for in Article 57.1 Spanish CC,[3] for which, in addition to the imposition of the main penalty, the Spanish CC requires the imposition of one of the accessory penalties set out in Article 48 Spanish CC, these measures may not always offer adequate protection for the victims. Conversely, Spanish criminal legislation permits participation in restorative justice programmes, regulating mediation as one of the mechanisms related to the suspension of a sentence (Art. 84 Spanish CC).

[3] According to this article, in cases where a subject is convicted for the commission of a crime of FM, in addition to the imposition of the main penalty, one of the penalties of prohibition on residing in certain places, approaching the victim, and communicating with the victim may be imposed, even on a mandatory basis in the case of imprisonment.

The situation is remarkably similar in Ireland, which criminalised FM in 2018 through the introduction of the offence of causing another person to enter an FM in Section 38 of the Domestic Violence Act 2018 (Leahy et al., 2018). Under the Act, a person is guilty of an FM if they engage in violence, threats, undue influence, or any form of coercion or duress for the purpose of causing another person to enter into a ceremony of marriage. For the purposes of the offence, the violence, threats, undue influence, or any form of coercion or duress referred to can be directed at the person forced to marry or at another person.

A significant difference, compared to the German and Spanish regulations, is that in Ireland the means used also include the exertion of undue influence or any form of coercion or duress on the vic-

tim, as mentioned in the discussion of the concept of FM. As specified in Section 38.(4) of the 2018 Domestic Violence Act, the means employed (aside from undue influence) may be directed towards either the person identified as the victim of FM or another individual, as the circumstances dictate. Additionally, the legislation provides a comprehensive definition of the term 'ceremony of marriage', encompassing any religious, civil, or secular marriage ceremony, whether legally binding or not. In this regard, the definition is broader and more reflective of the reality of FM than the Spanish interpretation.

Like the German and Spanish Criminal Codes, Irish law criminalises the act of forcibly removing an individual from the country with the intent of subjecting them to violence, threats, undue influence, or any form of coercion or duress abroad for the purpose of compelling them to participate in a marriage ceremony. The definition of 'removing' a person from the state is non-exhaustive and includes actions such as arranging any aspect of the individual's travel out of the country, accompanying them during any part of their journey, coordinating their reception upon arrival at their destination, or undertaking any other action aimed at facilitating their departure from the state. Just as in Germany, there is no aggravated crime when victims are minors. GREVIO's report (2023) on the legislative situation in Ireland concerning the criminalisation of FM criticised this point. It was likewise critical of the fact that the conduct provided for under Article 37.2 of the Istanbul Convention has not been taken up in its entirety insofar as luring a child abroad in order to force him or her to marry is not considered a criminal offence.

If found guilty of the offence of FM, a person shall be liable on summary conviction to a class A fine (currently classified as a fine not greater than €5,000), or a term of imprisonment not exceeding 12 months, or both, or, on conviction on indictment, to a fine or a term of imprisonment not exceeding seven years, or both.

Finally, in Finland, although there is no specific offence of FM, it is punishable as coercion (Finnish Criminal Code (hereinafter Finnish CC), Chapter 25, Section 8), which the Finnish CC defines as follows: 'A person who unlawfully, by using violence or making a threat, forces another person to perform, endure or abstain from performing an act shall, unless a more severe punishment for the act is provided elsewhere by law, be sentenced for coercion to a fine or to imprisonment for at most two years' (Finnish CC 39/1889, Chapter 25, Section

8). The punishment for coercion ranges from a fine to up to two years of incarceration. The essential elements of the offence are fulfilled when someone uses unlawful violence or a threat to force another person to do, endure, or leave something undone. Therefore, the victim does not need to be under the offender's control per se; the simple act of forcing the victim, through violence or a threat, into, for example, marrying someone is sufficient. The act of violence itself does not need to be punishable by law, and the threat does not need to include a threat of violence but can also be, for instance, financial coercion.

FM AS A FORM OF THB EXPLOITATION

FM is only explicitly regulated as a form of THB exploitation in the Spanish CC. However, the Finnish CC covers it as well, as a condition that violate human dignity. In contrast, in Ireland and Germany, FM is not punished as a form of human trafficking crime. In this regard, Section 1 of the Irish Criminal Law (Human Trafficking) Act 2008 defines the forms of human trafficking exploitation as sexual exploitation, labour exploitation, the removal of one or more of a person's organs, or forcing someone to commit an offence engaged in for financial gain (Section 1 Criminal Law (Human Trafficking) Act 2008). Theoretically, FM cases could be prosecuted as trafficking for sexual exploitation, or to force someone to commit a crime (FM) if it is done for economic reasons, but this does not happen in practice. A comparable situation exists in Germany, where Section 232 German CC includes sexual exploitation, labour exploitation, begging, commission of criminal offences, organ trafficking, and slavery as forms of exploitation in cases of human trafficking, but does not explicitly cover FM.

As for Spain, as previously noted, FM is also punishable when considered as a purpose of THB (Art. 177 bis Spanish CC). Consequently, in cases where the typical elements of human trafficking are present, the perpetrator could also be convicted of the crime of THB. The response to this offence is more comprehensive in cases where, for instance, a financial consideration is offered in exchange for the victim's delivery or when the victim is moved geographically to celebrate the FM (Torres Rosell, 2022). In these cases, what is truly penalised is the process leading to the celebration of an FM, thereby enabling the punishment of these actions in conjunction with the crime of FM itself. In such situations, the Spanish approach involves what

is known as a 'medial concurrence of crimes' which penologically entails starting with the penalty for the more serious crime and raising it to its upper half. In this case, the crime of THB (Art. 177 bis Spanish CC) stipulates sentences ranging from five to eight years of imprisonment, and, in some cases, may even reach up to 18 years of imprisonment. On the other hand, as noted above, the offence of FM (Art. 172 bis Spanish CC) is only punishable by a maximum of three years and six months of imprisonment.

In cases of human trafficking, unlike FM, the means by which the crime may be committed are more extensive. Not only violence or severe intimidation but also deception or exploitation of the victim's vulnerable situation are included as means of trafficking. Furthermore, when the victim is a minor, under Article 177 bis Spanish CC, there is no need to prove the presence of any specific means, and an aggravated penalty is automatically applied (Villacampa Estiarte, 2018).

In Finland, as already mentioned, the main way to punish FM, where it is possible to do so, is through human trafficking (Finnish CC, Chapter 25, Section 3). Human trafficking was criminalised in Finland in 2004. In this country, although the THB legislation itself does not explicitly mention FM as a specific form of exploitation, FM can be seen as a condition falling under one of the modalities: 'other conditions that violate human dignity'.

For a case of FM to be qualified as human trafficking, the act and means of trafficking, e.g. deceiving or taking advantage of the victim's dependent position or vulnerable state, must also be proved. However, if the victim is under the age of 18, the means need not be proved. The penalty scale for THB ranges from four months to six years of imprisonment; for aggravated THB, it ranges from two to ten years of imprisonment. If violence is used or the victim is under the age of 18, a case of FM could also be qualified as a case of aggravated THB, and the perpetrators could thus be sentenced for aggravated THB to imprisonment for at least two and at most ten years.

One of the main problems of the application of THB is that the threshold for applying human trafficking legislation in FM cases is high. For the case to qualify as human trafficking, the act, the means, and the purpose of exploitation must be fulfilled, and there must be an intent to exploit. Hong argues that the fact that different professionals encounter tens of FM cases a year, but the numbers of police investigations, prosecutions, and convictions remain low is a sign of

a legislative problem (Hong, 2020, 14). Hong (2019, 37) also points out that the majority of FM cases identified in Finland do not, in fact, meet the definition of human trafficking. This includes situations where the girl is forced to marry a spouse selected by her parents. It is not the intent of the parents to place their daughter in a situation of exploitation or conditions contrary to human dignity. On the contrary, they believe they are acting in the best interest of their child.

Some relevant trafficking judgments referring to FM have also been analysed by Koivukari et al. (2022), who looked into the application of the criminal provisions concerning THB and associated crimes. Koivukari et al. (2022) concluded that the application of human trafficking legislation in cases of FM is not very clear. This relates partly to the intent of the defendants, as it has not been possible to show that they would have known that the victim would be placed in a situation contrary to human dignity at the time of the marriage. Rather, the circumstances in the marriage or relationship became exploitative over time (Koivukari et al., 2022, 106.)

VICTIM PROTECTION MECHANISMS WITHIN CRIMINAL PROCEEDINGS

As numerous studies have pointed out (Council of Europe, 2017; European Union Agency for Fundamental Rights, 2014; Villacampa and Torres, 2019) in over half of the cases, victims are taken to their countries of origin to be married by their relatives, so that the crime is committed abroad. Therefore, the criminal proceedings become meaningful only when the criminal justice system not only contemplates victim protection mechanisms but also some kind of extraterritorial jurisdiction.

In this regard, German legislation establishes that abductions to foreign countries for the purpose of marriage or with the intention of FM during holidays abroad are also liable to prosecution, even if the marriage does not occur. FMs abroad are also now a punishable offence, as they have been added to the catalogue of offences subject to extraterritorial jurisdiction. This means that, regardless of the legislation in the foreign country, the German justice system can prosecute these cases when the offenders return, provided the victim's legal domicile or regular residence is in Germany (Section 5.6.c StGB).

From a procedural standpoint, the situation in Spain presents some challenges. Article 23.4.l) of the Spanish Ley Orgánica del Poder Judicial (hereinafter also LOPJ) establishes that Spanish criminal courts have jurisdiction to try cases of FM committed abroad if any of the following conditions is met: the proceedings are directed against a Spanish citizen or a foreign citizen who habitually resides in Spain or the victim of the crime, at the time of the FM, has Spanish nationality or habitually resides in Spain, provided that the person accused of the crime is present in Spain.

As a result, there will be a considerable number of cases, particularly when the victim does not habitually reside in Spain at the time of the crime, or when the perpetrator is neither Spanish nor present in Spain, in which the crime occurs abroad and cannot be tried in Spain. Even in cases where the victim is Spanish or has their habitual residence in Spain, if the perpetrator, despite having legal residence in Spain, returns to their country of origin, obtaining an extradition order becomes very difficult due to the principle of non-extradition of nationals (Alcázar Escribano, 2023; Salat, 2020).

In Ireland, proceedings relating to the extraterritorial offence can be undertaken anywhere in the country and the offence may be treated as having been committed in that place. However, Section 38.(3) of the Domestic Violence Act 2018 limits that possibility to cases where the offender is an Irish citizen or ordinarily resident in Ireland and the FM constitutes an offence in the place in which it occurs.

Finland provides for the application of the extraterritoriality principle by the active and passive personality principle, as well as the principle of universal justice, which facilitates the prosecution of FM cases committed abroad (Chapter 1, Sections 5, 6, and 7, Finnish CC).

Continuing with the analysis of victim protection mechanisms in criminal proceedings, in Spain, since 2015, there has been a law establishing a special statute for crime victims. Victims of FM will often be considered 'vulnerable victims' due to their age, nationality, or sex, as well as if they are also victims of trafficking. In this context, under the Victims' Statute, various protection measures are implemented during criminal proceedings to safeguard individuals affected by FM. These can be classified into two categories: those applied during the investigation phase and those implemented during the prosecution phase (Planchadell Gargallo, 2019).

The aforementioned legislation requires that statements be

taken in specially designed and adapted rooms and that these statements be taken by the same person, preferably a specialised professional. Moreover, these statements must be recorded to be used as evidence during the trial. In the trial phase, the law mandates that visual contact between the victim and offender be avoided and allows the victim to give evidence in a separate room or for the trial to be conducted in private.

In addition to the list of protection measures of a more procedural nature, the Criminal Procedure Act provides the possibility of implementing individual protection measures for the victim during the criminal proceedings. Specifically, Article 544 bis of the Spanish Criminal Procedure Act allows the issuing of a protection order for the victim in cases such as FM or THB. Such an order may include measures such as prohibiting the person under investigation from residing in certain locations or restricting their access to certain places, as well as prohibiting communication with or approaching the victim.

In Germany, victims have the right to receive psychological assistance during criminal proceedings. In addition, the person providing the psychosocial support may be present with the victim during interrogations and during the main hearing. Likewise, as with Spanish law, German law allows victims to give their statements in specially designed rooms or for them to be recorded as pre-constituted evidence. Specially designed rooms for waiting (witness rooms as waiting areas) are also provided for. Although the possibility of issuing a protection order for the alleged FM victim is not provided for, they may apply to the civil courts for such a measure. Moreover, as provided for under the German Protection against Violence Act of 2001, non-compliance constitutes a criminal offence (van der Aa et al., 2015).

In Ireland, specialised protective measures exist for victims, primarily tailored to those of sexual violence. The Criminal Justice (Victims of Crime) Act 2017 provides for a wide range of measures and services to protect and inform victims as their case progresses through the criminal justice system. If those special measures are applied, any interview with the victim must be carried out in premises designed or adapted for that purpose. It must also be carried out by or through persons who have been trained for that purpose, and, where there is more than one interview, they should be carried out, where possible, by the same member or members of the Garda Síochána or

the same officer or officers of the Garda Síochána Ombudsman Commission. Irish law, however, does not provide for the possibility of imposing victim protection orders under criminal law, although it is possible to apply for some of the civil law victim protection measures for victims of gender-based violence.

Finally, in Finland, under Chapter 1, Section 1, of the Restraining Orders Act (898/1998), a restraining order may be imposed by a district court to prevent an offence against life, health, liberty, or privacy, or a threat of such an offence, or any other kind of severe harassment. Although the maximum length of a restraining order is one year (or six months in cases where technological surveillance is used), it may be extended if necessary (Act 898/1998, Chapter 2, Section 7).

An inside-the-family restraining order can also be imposed on a person living permanently in the same residence with the person being threatened. In this case, the order may be imposed if the person against whom the restraining order is applied for, judging by the threats they have made, their previous offences, or other behaviour, is likely to commit an offence against the life, health, or liberty of the person who feels threatened, and the imposition of a restraining order is not unreasonable in view of the severity of the impending offence, the circumstances of the persons living in the same household, and other facts presented (Restraining Orders Act 898/1998, Chapter 1, Section 2, Subsection 2). The maximum duration of an inside-the-family restraining order is three months, which can be renewed for an additional three months (Restraining Orders Act 898/1998, Chapter 2, Section 7).

The police can also order a temporary restraining order confirmed by the district court. Inside-the-family restraining orders are most often first imposed as temporary orders by the police, e.g. during a domestic disturbance call in which the police take the threatening person into custody and the threat of a crime after the person's eventual release seems evident (Tuomioistuinlaitos, 2021). Both types of restraining orders can be used in cases of FM.

Based on Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and as stated in the Criminal Investigation Act, the police have an obligation to assess the victim's need for special protection, i.e. the need to protect the victim from re-victimisation, intimidation, or retaliation during the pre-trial investigation phase or at trial (Sisäministeriö,

2016, 9–11). If a need for special protection is identified, different measures can be taken, e.g. a screen can be installed in the courtroom between the complainant and the defendant, the interview can be conducted by a person of the same gender as the injured party, the case can be heard behind closed doors, and the documents can be sealed (Rikosuhripäivystys, 2018).

The victim has a right to a support person in the criminal justice process. The Ministry of Justice has assigned Victim Support Finland (Rikosuhripäivystys, 2018) the public service obligation of providing and offering public victim support services pursuant to the Victims' Directive.

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V. CIVIL AND FAMILY LAW PROTECTIVE MEASURES

As noted, all four of the analysed countries predominantly use criminal law to address FM. However, they have recently also turned to civil and family law to introduce some substantive and procedural measures of this legislative nature to address the phenomenon. In Germany, this was done through the 2017 Act to Combat Child Marriage, in Ireland, through the Domestic Violence Act 2018, and in Finland, through the Finnish Marriage Act (234/1929). As for Spain, although the aforementioned LO 10/2022 provides for a protective legal status for all victims of sexual violence, including FM victims, it does not provide for a complete civil law protection system to respond to FM. In this country, some of the civil protection measures available for these victims, such as the possibility of applying measures for the protection of minors in proceedings of any nature provided for under Article 158 Spanish Civil Code , as well as precautionary measures, were incorporated by Organic Law 8/2021, on the comprehensive protection of children and adolescents against violence. This regulation, in an equivalent way to the other comprehensive laws protecting certain victim groups in Spain already mentioned, such as LO 1/2004 for victims of gender violence or LO 10/2022 for victims of sexual violence, aims to be a comprehensive regulation for the protection of minors from violent conduct. Among the violent conducts falling within its scope of application, Article 1 specifically includes FM and child marriage.

The following pages will address substantive and procedural civil measures aimed at preventing and ending FMs. It should be noted that when one or both contracting parties are minors, it is possible in all four of the analysed countries for civil or family judges to implement child custody measures aimed at physically and legally separating minors from their families of origin, such as depriving the families of parental responsibilities and establishing administrative guardianship. However, these measures will not be addressed here, as they are not specifically envisaged as a response to FM and can be adopted in the face of any conduct posing a serious risk to the child's welfare undertaken by those who should be looking after them.

MINIMUM AGE TO MARRY

One of the legal mechanisms of a civil nature implemented to fight forced or child marriage is raising the minimum age to marry. All four of the analysed countries have adopted legal measures to raise this minimum age to 18, declaring marriage contracted under that age null and void, and in some cases also adding that marriages contracted abroad before this age would not be considered valid in the respective country.

Germany did this through the 2017 Act to Combat Child Marriages, which set the minimum age to marry at 18 years without exception. Before this law was introduced, there were exceptional cases in which girls could be married at the age of 16, which is now prohibited. This law also provides that marriages contracted – mostly abroad – before it came into force are null and void or can be annulled by a judge if the partners had not reached the age of majority at the time of the marriage. Specifically, Section 1303 of the Bürgerliches Gesetzbuch (hereinafter, BGB), the German CC, establishes that marriages in which one spouse was under 16 years of age are invalid and will not be recognised, with the exception of those in which both parties were of legal age when the Act to Combat Child Marriages entered into force or those in which both were already 18 years old upon entering Germany. These marriages are legally ineffective only in Germany; in the country of origin and other European countries, the parties may continue to be considered married. Because it does not regulate the consequences it has for minors born from the legally ineffective marriage, this declaration of nullity has been controversial in Germany and has been declared unconstitutional by the Federal Constitutional Court (decision of 1 February 2023). However, as the Court considers that the regulation would be constitutional if these effects were regulated, it allowed the current regulation to remain in effect until 30 June 2024, giving lawmakers time to address this regulatory gap. In addition to the nullity, the Act to Combat Child Marriages also amended the BGB (Section 1314), declaring that marriages in which one of the spouses was 16 or 17 years old may be annulled, except where both spouses are by now of legal age and want the marriage to continue or the annulment of the marriage would pose such a severe hardship for the minor spouse that continuation of the marriage appears to be necessary by way of exception.

The situation concerning the minimum age to marry is very similar in Ireland, where, until 1 January 2019, it was possible for children to be married. This was enabled by Section 33 of the Irish Family Law Act 1995, which allowed the parties to a marriage to seek an exemption to the requirement that both parties be aged 18 or over, complemented by an amendment to Section 2.(2).(c) of the Civil Registration Act 2004. Such exemptions may no longer be sought, as the provision was repealed by the Domestic Violence Act 2018. The current provision provides that it would be an impediment to marriage if

'one or both of the parties to the intended marriage will be under the age of 18 years on the date of solemnisation of the intended marriage and an exemption from the application of Section 31(1)(a) of the Family Law Act 1995 in relation to the marriage was not granted under Section 33 of that Act'. The Family Law Act 1995 (as amended) provides that: 'A marriage solemnised between persons either of whom is under the age of 18 years shall not be valid in law. This applies if the marriage occurs in Ireland, or if the marriage occurs outside Ireland and either of the spouses are ordinarily resident in Ireland'. Should such a marriage have taken place, an application could be made for a decree of nullity of the marriage, with the result that it could be declared null and void.

In Finland, too, the minimum age for a valid marriage is 18, without exception. Even some years before the new Finnish legislation on FM from 2023, legislative changes were made concerning the marriages of minors in that country. Under Part I, Chapter 2, Section 4 of the aforementioned Finnish Marriage Act, the Ministry of Justice could, for special reasons, grant permission to a minor under 18 years old to marry. This section was repealed in June 2019 (HE 2011/2018). Simultaneously with the new legislation on FM, the process for recognising marriages contracted abroad by under-age spouses was also assessed. Since October 2023, under the new Part V, Chapter 2, Section 115a of the Marriage Act, a marriage that fulfils the conditions for validity according to Section 115 is not considered valid in Finland, unless there are special reasons, if at least one of the fiancés was under the age of 18 at the time of the marriage and at least one of them had a place of residence in Finland.

As for Spain, the regulation of this issue clearly lags behind that in Germany, Ireland, and Finland. Until 2015, the minimum age to marry in Spain was 16 years old and could be 14 years old with a judicial dispensation. In July 2015, an amendment to the Voluntary Jurisdiction Act came into force, which had been undertaken because both the United Nations Committee on the Rights of the Child and the Council of Europe and various specialised NGOs had asked Spain to raise the minimum age for marriage, the lowest in the European Union, to 18 as a general rule. The measure was taken precisely to prevent FMs, as, in practice, the age of marriage had been rising naturally in Spain in recent decades. Since 2015, the Voluntary Jurisdiction Act has established that the minimum age for marriage in Spain is

18. However, and herein lies the difference between Spain and the other three analysed countries, a minor who has reached the age of 16 and has been emancipated may marry before that age. This emancipation can be obtained in two ways: with parental permission granted by means of a notarial document or with a judicial resolution of emancipation.

Attempts have also been made in Spain to set the minimum age of marriage at 18 with no exceptions, but so far they have not been successful. In 2018, the People's Party [Partido Popular or PP], then in government, presented a non-legislative proposal to the Spanish Congress in which it asked the government to raise the legal age for marriage, without any exceptions, to 18, claiming to follow the suggestions of the United Nations Committee on the Rights of the Child. This initiative was rejected by the rest of the parliamentary groups in the opposition, who argued that it might limit the freedoms of minors and was based on a puritanical view of marriage, which meant the end of the possibility of continuing education for women. They added that if the measure was truly going to be taken to limit FM, a report on the state of that issue in Spain should be prepared, which the PP had not done before proposing it. For all these reasons, the initiative was rejected in the Parliament.

OPERATIONALISING FREE CONSENT TO MARRY: ASSESSMENT OF THE SPOUSES' CAPACITY

A second type of measure that can be used to prevent FMs is to establish specific regulations regarding marital consent, i.e. operationalising free consent in domestic law, to prevent these types of marriages from occurring. The domestic legislation of some of the analysed countries includes explicit legal requirements of free consent for a marriage to be considered valid. Usually, they have been introduced to prevent not FMs, but the marriage of legally incapable spouses. Nevertheless, they may also result in a (forced) marriage being declared null and void if the consent is not full and free.

In Germany, Sections 1303 ff. of the BGB require that the person to be married be of legal age and legally competent, i.e. the spouse needs to be able to freely decide and understand the consequences of his or her actions. Similar provisions are included in Sections 4 ff. of the Finnish Marriage Act and Section 32 of the Irish Family Law Act 1995. In Spain, no legislative measures have been introduced to de-

termine vices of consent according to the age or circumstances of the contracting parties. Article 45 of the Spanish Civil Code, which establishes the need for consent, merely states that 'There shall be no marriage without marital consent', adding that no condition, term, or manner of limiting consent shall be considered to apply. The Spanish Public Prosecutor's Office, through Circular 1/2002, of 19 February – which regulates the conduct of prosecutors in matters of foreigners, addressing what they must do in the face of marriages of convenience, but adopts positions that might also be useful in the fight against FM – considers that valid consent to marriage must be interpreted strictly. It states that it is not enough for consent to be given without any vice of will (error, violence, intimidation, or fraud); it must be 'marital consent'. It must express the will of the contracting parties to fulfil the duties of co-habitation, purpose, respect, and mutual assistance. Hence, when these purposes are not met, the marriage can be considered a sham marriage and, therefore, null and void.

Additionally, in all four of the analysed countries, marriages must have been contracted after the document certifying that there is no impediment to the marriage has been processed by the competent authority. This is when the parties' capacity and the absence of such impediments is assessed and when the intention to enter into an FM in the territory of the state can be detected.

In Ireland, in order to get married, the intending parties must obtain a marriage notification form at least three months before the intended date of marriage (Section 32, Irish Family Law Act). This form is granted by the marriage registrar at the local Civil Registration Office, following an application for it by the parties to the marriage. The registrar must satisfy themselves that there is no impediment to the marriage before giving the notification form to the parties intending to marry. The provisions of the Finnish Marriage Act similarly control the absence of impediments to contracting marriage, with Sections 10 ff. establishing the need to obtain a certificate, usually from the Register Office, certifying the lack of impediments to contracting the marriage before the marriage can take place.

In Spain, a specific marriage case file called an expediente matrimonial needs to have been opened, or a notarial document been drawn up, before the marriage can take place. This process culminates in a decision authorising or refusing the marriage (Arts. 58 ff. of the Spanish Civil Register Act). Over the course of this procedure, the

competent official (legal counsel, notary, or civil registrar) meets separately with each of the contracting parties to ascertain their capacity and the existence of any impediments and may request any reports or measures deemed necessary to ensure that the consent is valid and the marriage is true. Additionally, during this process, the public prosecutor must also ascertain that there is no impediment (Art. 247 of the Civil Register Regulations). The investigation for this case file prior to the marriage is a suitable time to assess whether it is a case of FM. The problem may be marriages performed without such a preliminary investigation and submitted to the register for registration. Even in these cases, though, the Civil Register Act provides that the register officials must assess the capacity of the contracting parties and absence of impediments to contracting marriage before it can be registered (Art. 58.10 Civil Register Act). Religious marriages intended to have civil effects can also only be celebrated after completion of a procedure similar to the one described above (Art. 59 Civil Register Act). Thus, even the choice of a religious marriage does not exempt the parties from the need to certify their capacity to enter into marriage and the absence of impediments thereto.

Finally, German legislation also requires a legal examination of the legal capacity of the parties intending to marry, although it is not clearly established by law that this procedure must take place before the marriage is contracted, but rather as a kind of control of legality and capability that is contemporaneous to the marriage's celebration. According to Section 1310 BGB, the marriage needs to be registered, which is when this control takes place in Germany. This regulation establishes that marriage occurs through a personal statement made by the spouses before a registrar as part of what is known as a compulsory civil marriage. The registrar may not refuse to cooperate in the conclusion of a marriage that the contracting parties have stated they wish to enter into as long as the prerequisites for concluding the marriage are met and may only refuse to cooperate if it is obvious that the marriage would be voidable or ineffective or that its annulment is an available option.

Due to the requirement for the marriage be contracted only after the aforementioned registration procedure has been conducted when it is intended to have civil effects, it is clearly easier to conclude an FM performed by religious rites not intended to have such effects. This is why in countries such as Ireland and Germany, religious and

traditional ceremonies are also legally addressed and declared punishable, although in Germany only when at least one of the contracting parties is a minor.

LIMITATIONS ON PROXY MARRIAGES AND RECOGNITION OF MARRIAGES CONTRACTED ABROAD

A third form of measures to prevent FMs from being contracted consists of limiting the possibilities of concluding proxy marriages, as well as establishing conditions to legally recognise marriages that have been contracted abroad.

As for the limitations on proxy marriages, three of the analysed countries do not accept this option for contracting marriage. Because in Germany, Ireland, and Finland, the law requires both parties to a marriage to be physically present at the ceremony, proxy marriages are not legally binding in those countries. Such a requirement is, implicitly or explicitly, included in Section 31 of the Irish Family Law Act, Section 15 of the Finnish Marriage Act, and Section 1312 BGB, when it regulates the marriage ceremony. The only one of the four analysed countries in which proxy marriages are legally accepted is Spain; thus, the option of establishing limitations on the acceptance of proxy marriages to prevent FMs from being contracted is a measure that has not yet been explored in this country. In Spain, the personal conditions that the contracting parties must meet to contract marriage by proxy are the same as for contracting marriage in general. Marriage by proxy is regulated under Article 55 of the Spanish Civil Code, which states that only one of the contracting parties may contract by proxy and may revoke the power of attorney at any time. As there are no specific age requirements, a person who is at least 18 years old (or 16, if they have been emancipated) can grant power of attorney to another person to marry.

Even in the three countries where proxy marriage is prohibited, the prohibition on celebrating such marriages in their territory does not necessarily mean that they do not recognise such marriages contracted abroad, as long as they are allowed under the applicable legislation of the territory where they have taken place. For instance, in Ireland the judgment in the matter of Hamza v Minister for Justice, Equality and Law Reform, found that a marriage for the purpose of family reunification application under the Irish Refugee Act 1996 was

valid despite not being recognisable in Irish law.

Precisely in order to prevent forced or other illegal marriages from being contracted abroad as a way to circumvent the laws in force in European countries, and to prevent those marriages from taking place among foreigners in their own territory, some countries have established limitations on the recognition of marriages contracted abroad and specific rules for marriages of foreigners to take place. Some of these limitations are aimed at preventing the recognition of FM. Others are not as specific and were mostly introduced to combat marriages of convenience to prevent regularisations of residence through sham marriages but can also be used to prevent the recognition of FMs.

This is why, as noted, in Germany, Ireland, and Finland, both parties must fulfil the minimum age requirement to marry for a marriage contracted abroad to be recognised in them. Hence, marriages contracted abroad with spouses under the age of 18 can be annulled by judges under German law. Under Irish law, they are simply declared invalid, even if they were contracted abroad, if at least one of the parties has Irish legal residency. This is also the case under the Finnish Marriage Act. In Spain, even if the person declares ex ante that he or she wishes to marry abroad, Article 58 of the Civil Register Act provides that the Spanish official in the place of residence of the contracting party shall determine whether he or she has the capacity to enter into a marriage and whether there are any impediments, which means that women can avoid travelling to their families' countries of origin to be forced to marry. The German regulations are slightly different. In that country, under Section 1309 BGB, the certificate of marriageability for a foreigner wanting to marry stating that he or she is not subject to any impediment is issued not by a German public officer, but by the domestic authority of that party's home state, who certifies this situation according to the legal provisions of that country.

In the case of marriages already celebrated abroad and intended to be recognised in any of the four analysed countries and, thus, to be recorded at the pertinent register after having been celebrated, precautionary measures are taken, not so much to prevent FM as to prevent the recognition of sham marriages. Some of these measures can nevertheless also be useful to prevent FMs from being legalised. In Spain, for a marriage contracted abroad to be recognised, the aforementioned marriage case file process must be followed. It is

thus when the marriage is intended to be registered that the competent professionals can verify the capacity of the contracting parties and the absence of impediments to its celebration. Indeed, the aforementioned Circular 1/2022 of the Public Prosecutor's Office includes instructions regarding the completion of this procedure in these cases. Specifically, in these cases, prosecutors are asked to pay special attention to the separate interviews of the two spouses before registering the marriage in order to detect whether it is a sham marriage – because the spouses do not know each other sufficiently – so as to deny registration. In Finland, the Marriage Act includes regulations concerning the recognition of foreign marriages. For the time being, Finland recognises FMs according to its law, as it does all other marriages that are not sham marriages (Kangas, 2013). Something similar happens in Ireland, where, if either party to the marriage is a non-EEA national, the registrar must conduct an interview and ascertain that person's residence permission. The registrar can refuse permission if they form the view that the marriage is solely for the purpose of one of the parties to the marriage obtaining an immigration benefit.

CIVIL LEGAL REMEDIES TO DISSOLVE AND ANNUL FORCED MARRIAGES

The legislative systems of all four of the analysed countries also provide for mechanisms to end FMs that have already been contracted. There are two ways to end a marriage of relevance to FM victims. The first is divorce; the second is the marriage's annulment. Both have different consequences, as the legal consequences of divorce come into effect only after the divorce takes place (i.e. it has ex nunc effects), whereas those of the annulment of any legal act, including marriage, come into force retrospectively (i.e. it has ex tunc effects) (Saarnilehto and Annola, 2011). In Finland, where the choice of divorce or annulment to put an end to these marriages has been discussed, pros and cons of both mechanisms have been highlighted. The Finnish government took the initiative to create the necessary legal conditions to annul FMs in consideration of the fact that the annulment of the marriage would have a strong symbolic significance. According to this view, the legislative change would convey that FM is a human rights violation and will not be accepted. Moreover, unlike a divorce, annulment of the marriage would restore the victim's 'unmarried' marital

status, thereby preventing their stigmatisation. However, it is worth noting that in cultures in which marital status is considered an important part of a person's status in general, the difference between a divorce and the annulment of a marriage may not be widely known or understood (HE 172/2021). Besides, certain family law issues must be considered when a marriage ends because of annulment, with the ensuing retrospective effects, as opposed to divorce. First, there may be some uncertainty as to whether the legal consequences of the marriage should cease to exist as a result of the annulment. Although it seems – and was so understood by the Finnish government (Oikeusministeriö, 2019) – that the legal protections pertaining to family law issues arising from marriage, such as the status of children born within the marriage, would remain in effect following the annulment of an FM, the legal status of the person forced into the marriage would be weaker after an annulment than after a divorce. Second, the legal proceedings to annul an FM would be more demanding on the person claiming to have been forced to enter into a marriage than the proceedings for a divorce, as the mean of force would need to be proved in the annulment proceedings. Finally, third, the legal consequences of a marriage annulment may be unpredictable, especially if the marriage has taken place abroad and the law of the country declaring the annulment is not applicable to the annulled marriage.

Despite these pros and cons, and perhaps due to the understanding that, in a context of FM, the forced spouse might want the marriage to be completely erased rather than merely ended, lawmakers in all four countries have predominantly introduced specific regulations on marriage annulment to end FMs. However, in view of the aforementioned doubts regarding the effects of annulment, coupled with the fact that the evidentiary requirements of divorce proceedings are increasingly less demanding in Western countries, FM victims should be provided with knowledge and education of the different ways of ending FMs and their respective effects so that they can make an informed decision on how best to end the marriage in their specific case.

With regard specifically to marriage annulment, the respective family law acts or civil codes of all four of the analysed countries have sections that can explicitly or implicitly lead to the annulment of an FM. The Irish Family Law Act (as amended), (Section 39) provides that an application can be made for a decree of nullity of a marriage,

which courts can grant in a number of scenarios, including those in which the consent to the marriage was not free, full, and informed. In this country, an annulment can be granted if consent is obtained by duress. In the case of N (otherwise K) v K 1985, the Irish Supreme Court noted that duress is not restricted to threats of psychological harm or other harmful consequences, and that the court must consider whether the consent of the parties was real or apparent. As the Supreme Court states, if the decision to marry was 'caused by external pressure or influence, whether falsely or honesty applied, to such an extent as to lose the character of a fully free act of that person's will, no valid marriage had occurred'.

German law, amended on this point by the 2017 Act to Combat Child Marriage (Sections 1313 ff. BGB), allows, in addition to divorce, for an FM to be declared null and void, as family courts will consider factors including the circumstances surrounding the FM to dissolve it. To this end, it is necessary to prove that one or both parties were coerced into the marriage against their will. Nullification can be sought by the FM victim, their legal representative, or other authorised individuals. These possibilities of annulment are to be added to those already mentioned in which the marriage is considered null or annullable for involving a minor spouse.

In Spain, although no specific civil law regulatory measures have been adopted for the nullity of FMs, the grounds for nullity provided for in the Spanish Civil Code are sufficient to annul them. Article 73 of the Spanish Civil Code establishes that any marriage entered into without marital consent or contracted out of coercion or serious fear, among other causes, is null and void. This includes not only marriages of convenience, as indicated in Circular 1/2002 of the Spanish Public Prosecutor's Office, but also FMs. Moreover, the action to seek the nullity of the marriage may be pursued by the spouses, the Public Prosecutor's Office, or any person who has a direct and legitimate interest in the nullity (Art. 74 Civil Code), meaning that the public prosecutor can instigate it. When the cause of nullity is failure to meet the age of majority, only the minor's parents or representatives or the public prosecutor may bring the nullity action; once he or she reaches the age of majority, only that person may, unless he or she has cohabited with the other spouse for more than one year while of legal age (Art. 75 Civil Code). When the cause of nullity is a mistake, coercion, or grave fear, only the person who has suffered it may file for

nullity, although the action lapses one year after the vice has ceased (Art. 76 Civil Code). The nullity and dissolution of the marriage – by divorce (Art. 85 ff. Civil Code) – are civil effects arising from FM, as shown by the introduction by LO 10/2022 of a fourth paragraph to Article 172 bis Spanish CC, which regulates the offence of FM, to clarify that, in sentences for this offence, the corresponding decisions will be made on the nullity or dissolution of the marriage and on filiation and the setting of maintenance.

Finally, of the four analysed countries, Finland is the one to have most clearly tailored the regulations for the annulment of marriage to cases of FM. In this country, where the existing remedies to end FM have been most closely studied, the original text of the Marriage Act could not be used to annul FM, since Section 19, which regulates traditional grounds for annulment, applied only to certain formal circumstances listed therein (e.g. if the ceremony had been performed by a person not qualified to do so or without meeting the formal requirements of Section 15), which do not include FM. Since October 2023, the Finnish Marriage Act has included new sections, namely, 27 a) and 27 b). Under Section 27 a), the marriage shall be annulled if a spouse has been forced into it. Under Section 27 b), the annulment of a marriage has the same legal effects as a divorce. The Finnish legislation thus avoids the different legal regimes that can follow a declaration of divorce and annulment.

FAMILY AND CIVIL PROCEDURAL MEASURES TO PROTECT POTENTIAL FM VICTIMS

Finally, as for the civil or family law remedies to deal with FM, reference should be made not only to those of a substantive nature, such as those described so far, but also those of a procedural nature that family courts can adopt to protect FM victims. Not only minors at risk of being forcibly married or who have already entered into an FM while still in the care of their parents, but also adults who have been victimised by the same conduct may prefer to seek civil rather than criminal law protection from the offenders. In Europe, the country with the most developed system for the protection of FM victims in family courts is the UK, through the FM protection orders instituted under the Forced Marriage (Civil Protection) Act 2007. However, this does not mean that, albeit to a lesser extent, the analysed countries do not also have civil protection measures of a procedural nature.

In Ireland, safety and protection orders can be sought to protect victims of domestic violence but there are no specialised orders solely to protect a potential victim of FM. It is understood that a person who has been a victim of FM could seek a protection or safety order against the person they were forced to marry. In the case HSE v MM [2019] IESC 55, social workers intervened to seek care and supervision orders in relation to a child suspected to be at risk of FM. When the matter came before the Supreme Court, orders were made that her location could only be disclosed to certain Health Service Executive staff and members of the Gardaí and restraining her parents from removing her from the jurisdiction. These orders were available to the Court because the victim was a child. Based on the Supreme Court's treatment of that matter, it is clear that a risk of FM is considered a child protection issue warranting social work intervention to prevent a child from being subjected to the practice.

In Germany, there are likewise no civil protection orders specifically designed to protect victims of FM. However, victims of such behaviours can benefit from the application of the protective measures provided for under the German Act on Protection Against Violence (Gewaltschutzgesetz, GewSchG), which protects anyone affected by violence and threats of violence and includes provisions on both domestic violence and violence outside close relationships. Section 1 GewSchG, applicable not only to minors, but also to adult victims of violence, provides that victims of violence may move for a family

court protection order. In this order, the court imposes the necessary measures to prevent further injuries or threats, such as those restraining the perpetrator from entering the victim's dwelling, coming within a certain proximity of the victim's dwelling, visiting certain other places frequented by the victim, establishing contact with the victim (including by phone, messenger services, letters or e-mail), and bringing about a meeting with the victim. The types of measures adopted are determined in accordance with the risks and threats concurring in the concrete case. The protection order expires after a specific time period, which can be extended upon motion.

In Finland, there are likewise no civil protection orders specially designed for FM cases. Moreover, civil injunctions are not usually used in cases of domestic violence and violence against women. What is used in this country are so-called quasi-criminal protection orders, a type of precautionary measure that is not truly criminal in nature despite being regulated under the criminal procedure law (Van der Aa et al., 2015). Hence, why they are mentioned here rather than in the discussion of victim protection mechanisms in criminal proceedings. They can be obtained through a separate ("quasi-criminal") process before the district courts, regardless of criminal proceedings. The most common ones are regulated in the Act on Restraining Orders (898/1998), including the basic, extended, and temporary restraining orders, as well as the barring and temporary barring orders (Van der Aa et al., 2015). These mechanisms, which are similar to those of a likewise hybrid nature being adopted in Denmark or Sweden, can be more advantageous from a victim's perspective than criminal protection orders, as they can be easily obtained through a simpler and more informal process, can be imposed as precautionary measures, and do not necessarily result in a criminal record for the offenders.

Finally, in Spain, the measures that can be taken by a civil judge only serve to protect minor victims; older victims, no matter how young, who want to obtain a restraining order have no choice but to turn to the criminal justice system. As for minors, a civil judge, after following the corresponding family proceedings, can issue a judgement depriving one or more parents of parental authority (Art. 170 Spanish Civil Code). Furthermore, Article 158 of the Spanish Civil Code provides that a judge, in any type of civil, criminal, or non-contentious proceedings, may, ex officio, at the request of the child or of the Public Prosecutor's Office, adopt appropriate measures to: 1. pre-

vent the abduction of the minor children by one of the parents or by third parties (prohibition of departure from the national territory unless authorised by the court, prohibition of the issuing of a passport or withdrawal of a passport from the minor, making changes of address of the minor subject to judicial authorisation); 2. prohibit parents, guardians, or other relatives or third parties from approaching the minor and from approaching his or her home or school and other places he or she frequents; 3. prohibit communication with the minor, thereby preventing parents, guardians, or other relatives from establishing written, verbal, or visual contact by any means of communication with the minor; and 4. suspend, on a precautionary basis, the exercise of parental authority, guardianship, and custody, as well as the visiting and communication regime established in a judicial decision or judicially approved agreement. The provision concludes that the (civil) judge may adopt 'in general, all measures that he or she considers appropriate in order to remove the minor from danger or prevent harm to him or her in his or her family environment or from third parties'. Such measures are not cross-border. In Spain, European protection orders can only be issued by criminal judges, which obliges victims to go through the criminal justice system (Art. 130 ff. of Law 23/2014, of 20 November, on the mutual recognition of criminal decisions in the European Union). This does not mean that one of the aforementioned measures implemented by a civil judge cannot be enforced in another EU Member State or even outside the EU through existing judicial assistance mechanisms; however, it cannot be done with the immediacy with which a European protection order would be enforced.

VI. ADMINISTRATIVE AND IMMIGRATION LAW PROTECTIVE MEASURES

When it comes to the regulatory frameworks governing administrative and immigration mechanisms to safeguard victims of FM across the four analysed countries, there is a considerable diversity in approaches.

In contrast to the United Kingdom, all four of the analysed countries lack legal provisions empowering the police to enforce protective measures for FM (e.g. police or administrative protection orders, police cautions) without a court order authorising it. In Spain, for any form of protective measure to be obtained, at a minimum the victim must report the incident to the police. In Ireland, the Minister for Justice has indicated that there are plans to introduce better protections for victims of DSGBV when they are giving evidence as witnesses before the courts in certain criminal proceedings.

Other measures of an administrative nature that may be available to victims of FM include the possibility of applying for asylum, as well as obtaining a residence and work permit, or the so-called period of recovery and reflection. However, most of these measures have been regulated from the perspective of alien law, making them applicable only to foreign victims.

ASYLUM FOR FM VICTIMS AS VICTIMS OF GENDER-BASED VIOLENCE

Beginning with the first of the aforementioned rights, the right to asylum for victims of FM derives from Article 60 of the Istanbul Convention, which recognises them as victims of gender-based violence (European Union Agency for Fundamental Rights, 2014). Also, Directive 2011/95 on international protection outlines the criteria for granting both refugee status and subsidiary protection to third-country nationals. Refugee status is granted to individuals facing persecution due to factors such as race, religion, nationality, political beliefs, or membership in a particular social group. The directive also offers subsidiary protection to those who do not meet the refugee status criteria but demonstrate significant grounds for believing that returning to their home country would expose them to severe harm, including the risk of death penalty, execution, torture, or inhuman and degrading treatment. Recently, the Advocate General of the Court of Justice of the European Union (Case C-621/21) concluded that the competent national authority may consider that the woman in question belongs, because of her gender, to a 'particular social group' on the grounds that her return to her country of origin would expose her to acts of serious marital violence. However, in practice, obtaining asylum on the grounds

of gender discrimination has proved to be difficult (Wilson, 2007).

As for Spain, there are some examples of courts accepting FM as a valid case for applying for asylum based on discrimination following its rejection by the Spanish authorities (ECLI:ES:TS:2011:4013). In other cases, they refused to grant this right (Torres and Villacampa, 2022).

As in Spain, in Germany, pursuant to the European directive and Section 3a, paragraph 2, no. 6 of the Asylum Act (AsylG), a victim or potential victim of FM can apply for asylum, as it is considered a gender-specific act of persecution (Deery, 2022). In this regard, some court decisions have recognised this right, such as the judgment of the administrative court of Göttingen 4 A 313/17 of 4 May 2021. [4]

[4] https://www.asyl.net/fileadmin/user_upload/29627.pdf .

Ireland affirms that, when evaluating applications for international protection involving gender-related persecution, the International Protection Office (IPO) considers the UNHCR's Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. It recognises that being subjected to or at risk of FM can be a basis for obtaining refugee status. Notably, many cases before the High Court related to FM are intertwined with applications for international protection. One such instance is the case of N.N.M. v International Protection Appeals Tribunal, where the High Court ruled that the International Protection Appeals Tribunal had inadequately assessed the feasibility of internal relocation as a suitable solution for a woman at risk of FM.

In Finland, it is also possible to apply for asylum as a victim or a person at risk of becoming a victim of FM, although FM victims who have become asylum seekers for continued stay in Finland have reported difficulties in daily life activities and integration processes because their right to services reserved for residents of a municipality have been discontinued (Pihlaja and Piipponen, 2023, 51). This situation can be seen as an obstacle to accessing justice.

RESIDENCE AND WORK PERMIT

Regarding the possibility of obtaining a residence and work permit, under Article 59 (1) of the Istanbul Convention, victims of all forms of violence covered by the convention (therefore including FM) must be granted autonomous residence permits following the dissolution of the marriage or the relationship.

In Spain, the Aliens Act (Organic Law 4/2000 on the Rights and Freedoms of Aliens in Spain and their Social Integration, hereinafter also LOEX from the Spanish) recognises this option in cases of sexual-based violence (Art. 31 bis). However, until the enactment of the recent Organic Law 10/2022, FM victims were not covered by that law. With the passage of this legislation, FMs are now legally recognised as a form of sexual violence (Art. 3). The permit can be for a duration of up to five years and is also extended to the children of the woman victim of FM. However, a problem arises for victims of an FM offence under Article 172 bis Spanish CC. Spanish law requires the victim to have at least reported the facts to the police. In the absence of such a report, it is not possible to obtain even a provisional residence and work permit.

While some states have indeed implemented measures to make it more difficult to obtain a residence permit for family reunification, such as increasing the minimum age requirement for obtaining a family reunification visa (Dauvergne and Millbank, 2010), Spain has not adopted any such measures.

Also, unlike countries such as the Netherlands or Denmark, which have increased the age requirement for family reunification to 21 and 24, respectively, or directly prohibited family reunification in suspected cases of FM (European Union Agency for Fundamental Rights, 2014), Spain has not taken similar actions.

The second issue is related to the declaration of nullity of the marriage. In Spain, once the residence permit for family reunification has been granted, a minimum trial period of two years is established (Art. 59.2 RD 557/2011, of 20 April). If, during this period, a marriage annulment or divorce is declared, it implies the loss of the visa. The only other grounds for obtaining an independent residence permit before the two years have elapsed is if the person concerned has been a victim of gender violence. This case is expressly provided for in Article 59 of the Istanbul Convention, as well as Article 13 of Directive 2003/86/EC, on the right to family reunification. Again, in Spain,

where the concept of gender-based violence is very much restricted to domestic violence, cases of FM should also be considered a situation justifying obtaining a residence permit without having to first complete two years of marriage (Villacampa Estiarte, 2018).

In Germany, an FM of the spouse does not automatically alter the residential status of girls and young women residing in the country. Nonetheless, if the legal residence is contingent on the spouse, an autonomous right of residence, independent of the marriage, is established after three years of cohabitation within the marital union. In cases of extraordinary difficulty, an extension of the residence permit may also be granted even before the completion of this three-year period (Section 31 Residence Act).

Family reunification is prohibited in Germany if there are credible indications warranting the belief that one of the spouses was compelled into the marriage (Section 27 (1a), 2nd Residence Act). However, foreign nationals holding a residence permit who have been forcibly coerced into marriage or threatened with severe consequences, preventing their return to Germany, are entitled to re-enter the country within ten years under Section 51(4) sentence 2 of the Residence Act. This re-entry is subject to providing proof of the FM. The application must be submitted within three months of the cessation of coercion during this ten-year period. A key requirement for consideration is the individual's demonstrated ability to integrate into German society, based on their prior education and experiences in Germany, as outlined in § 37 Abs. 2a AufenthG. In addition, if their residence permit has expired, they can claim a right to return (Section 37 (2a) Residence Act). The prerequisite is that the person can fit into the living conditions of the Federal Republic on the basis of previous education and living conditions (Section 37 (2a) Residence Act).

Likewise, Section 4(7) of the Irish Immigration Act 2004[5] provides that the Minister for Justice may renew or vary the permission of a non-national on application of the person concerned. A specific policy exists in relation to non-EEA nationals who have experienced domestic violence by a person on whom they depend for residence permission, allowing them to seek an independent residence permission that will no longer be linked to that abusive person.[6] While there is no specific provision relating to FM in that policy, as a person who is a victim of FM is a victim of crime, it would stand to reason that such a person could seek residence permission on the basis of either

[5] See the full consolidated version of the Act here https://revisedacts.lawreform.ie/eli/2004/act/1/section/4/revised/en/html.

[6] Victims of Domestic Violence Immigration Guidelines, available at: https://www.irishimmigration.ie/wp-content/uploads/2023/07/Vicitms-of-dometic-violence-immigration-guidelines-june-2021.pdf.

Section 4(7) or the Minister for Justice's inherent discretion to grant permission to reside in the country.

Finally, in relation to Finland, the annulment of marriage can have unpredictable consequences for the person forced to marry. Many FM victims in Finland have been granted a residence permit on the basis of family ties. After the marriage ends, the residence permit cannot be continued on the same basis. Victims of FM must therefore apply for a residence permit on a different basis or apply for international protection in order to stay in Finland. If the FM case is investigated by the police as THB or aggravated trafficking, the victim can be issued a temporary residence permit, as prescribed in Chapter 4, Section 52a of the Aliens Act (301/2004). However, cases of FM are not always investigated as trafficking. Another option would be to apply for an extended permit, which can, under Chapter 4, Section 54, Subsection 7 of the Aliens Act, be issued if the victim's spouse has committed or endorsed acts of violence or abuse against him or her or his or her child while their family ties were still in force, and it would be unreasonable to refuse the permit under the circumstances. However, in many FM cases that have taken place in Finland, the victim has not applied for an extended permit on these grounds because of the unpredictability of the process. Thus, many victims end up applying for international protection as asylum seekers as returning to their home country is not an option due to the threat of honour-based violence (Pihlaja and Piipponen, 2023, 19). If the victim of FM has first resided in Finland on the basis of family ties, he or she has had access to the integration services. If the residence status is changed to that of asylum seeker, it can have a wide range of consequences for the victim.

PERIOD OF RECOVERY AND REFLECTION

In addition to the aforementioned measures, Spain and Finland regulate a period of recovery and reflection. In this case, the main problem lies in the fact that this mechanism is only provided for foreign victims without legal residence in the specific country. As a result, the rights offered during this period are unavailable to the rest of the victims, including, for example, those of Spanish nationality or foreigners with legal residence. Consequently, a considerable number of cases are left out, as evidenced by criminological studies in Spain (Villacampa and Torres, 2019).

In the case of Spain, the legislation on aliens regulates this period of recovery and reflection (Art. 59 bis LOEX), but exclusively for victims of human trafficking. It thus applies to cases of FM only when they have been carried out or were intended to be carried out through the prior commission of the crime of human trafficking. This period lasts for at least 90 days and is designed to give the victim sufficient time to decide whether she wishes to cooperate with the authorities in the investigation of the crime and, if necessary, in the criminal proceedings. During this period, the law stipulates that the authorities may not initiate disciplinary proceedings against the victim for not having a legal residence permit in Spain, nor may they deport her. Moreover, temporary residence will be authorised for the victim and her minor children, and the competent administrations will ensure their subsistence, safety, and protection. Ultimately, it is during this period of recovery and reflection that the victim must decide whether to cooperate with the authorities in the investigation of the crime and, if applicable, in the criminal proceedings. In practice, however, data indicates that this period is only granted in a very small percentage of cases (Torres and Villacampa, 2022).

As in Spain, in Finland, before a residence permit is issued, a reflection period can be granted to a person suspected of being a victim of THB who is in the country without a right of residence in accordance with Chapter 4, Section 52b of the Aliens Act (301/2004). The length of the reflection period is from 30 days to six months, and during it the victim must decide whether he or she will cooperate with the police in apprehending the suspect. According to the law, the reflection period may be suspended if the victim has voluntarily and on his or her own initiative re-established relations with the suspect(s). It is not known how many victims of FM may have been granted a reflection period (Jokinen et al., 2023).

Finally, In Ireland, victims of human trafficking offences can apply for a 60-day period of reflection and recovery, a six-month temporary residence permission for the purpose of assisting with an investigation of a human trafficking offence, or, after such permissions or if the investigation has concluded, for a further two-year residence permission. While it is the experience of the Immigrant Council that some victims of very serious violent crimes have been granted residence permission, there is no published policy in relation to a residence permission for the investigation of crime other than the Admin-

istrative Immigration Arrangements for the protection of suspected victims of human trafficking.[7] These arrangements may apply to a non-EEA person if they are found to be a victim of human trafficking and have no other residence permission in the state.

[7] https://www.irishimmigration.ie/wp-content/uploads/2020/04/Administrative-Immigration-Arrangements-for-the-Protection-of-Victims-of-Human-Trafficking-March-2011-1.pdf

VII. CONCLUSIONS

This comparative legal study, along with the brief phenomenological analysis at the start, shows that the reality of FM has surfaced in all four of the analysed countries, mainly due to high-profile cases. However, the lack of systematic data collection and the observed gap between the officially recorded cases and the approximate figures provided by third-sector organisations suggest that the cases coming to light may be only the tip of the iceberg.

In general terms, Spain, Germany, Finland, and Ireland have signed and ratified international legal instruments declaring that FMs are a violation of human rights, that it is a fundamental right to marry only with free and full consent, that being of legal age is a requirement to marry, and that the intentional conduct of forcing an adult or a child to enter into a marriage or luring someone to the territory of a state other than the one he or she resides in to force this person to marry is to be criminalised. In particular, the signature and ratification of the Istanbul Convention by the four analysed countries obliges them to adopt an approach centred on a 3P or 4P policy for dealing with FM, that is, focused on the protection of victims, together with prevention and a coordinated response, rather than solely the prosecution of these conducts.

Despite the holistic strategy to address this reality that the four analysed countries are obliged to adopt under the Istanbul Convention, they have generally preferred to take a primarily punitivist regulatory approach. The criminalisation of FM, either by creating an ad hoc offence – as Germany (Section 237 StGB), Spain (Arts. 172bis and 177bis Spanish CC), and Ireland (Section 38 Domestic Violence Act 2018) have done – or through pre-existing offences such as coercion or THB, has been the preferred legislative response to these conducts. Only in Spain and Finland is there evidence of the use of the crime of THB to prosecute FM. Despite this approach, some of the analysed countries do provide for protective measures in the framework of criminal proceedings to avoid secondary victimisation of the victims, as well as protection orders to guarantee the safety of the victims that can be adopted by the criminal courts. In addition, the specific criminalisation of FM has led to the assumption of a very strict legal conception of it, too close to that which the Istanbul Convention requires its States Parties to criminalise, which leaves out of the focus those marriages contracted with highly conditioned consent and situations in which the contracting parties are trapped in FMs, especially in Spain, Germany, and Ireland.

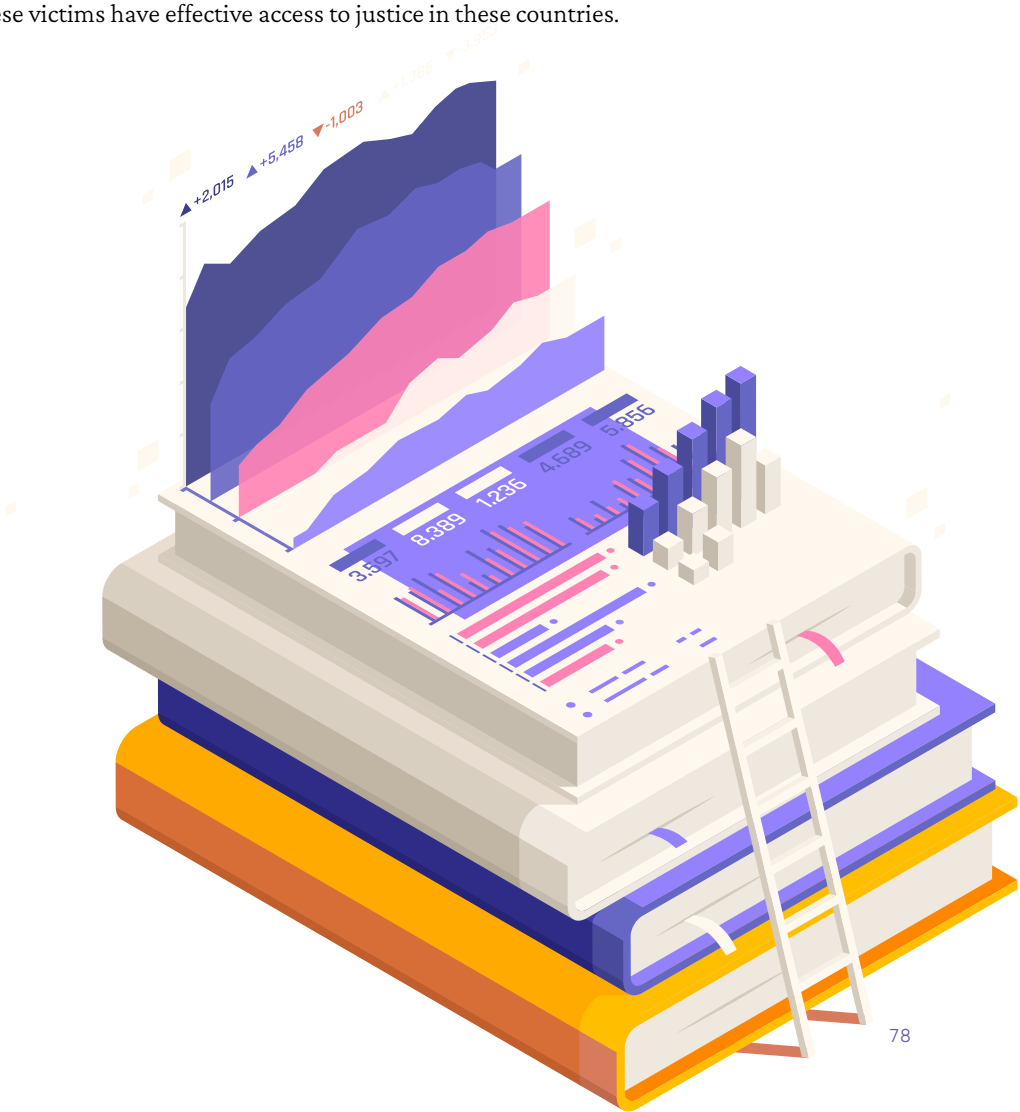
Beyond the punitive approach to these behaviours, Germany (through the 2017 Act to Combat Child Marriages), Ireland (through

the Domestic Violence Act 2018), and Finland (through the Marriage Act (234/1929)), have adapted to FM existing civil regulatory measures to guarantee the freedom to enter into and dissolve and end marriages. These measures include, among others, raising the minimum age to marry, operationalising the free consent, limitations on proxy marriages and the recognition of marriages contracted abroad, the dissolution and annulment of the marriage, and the provision of procedural measures to protect potential victims of FM. In Spain, beyond increasing the minimum age to marry and providing for protective measures to be adopted by civil or family judges to protect only underage victims, the civil system has yet to specifically addressed this reality. However, Organic Law 10/2022 does include a comprehensive legal protection status for victims of sexual violence, including FM, and the approach to FM has been markedly holistic in some areas of Spain, especially Catalonia. In the analysed countries, civil law has not addressed the marital unions of a religious or traditional nature, without civil effects, through which FMs are usually contracted, with the sole exception of their classification as an administrative offence when at least one of the contracting parties is a minor in Germany and as a criminal offence of FM in Ireland.

The holistic legal approach to FM also requires providing for victim protection measures in the fields of administrative and immigration law. In this regard, the analysed countries formally provide for the possibility of granting asylum rights to FM victims, although it remains to be seen whether this possibility is actually applied. The limitations on family reunification in cases of FM regulated by some of the analysed countries do not always have as a counterpart the provision of special residence and work permits for these victims, which are often contingent on their reporting the FM, or facilities to return them to the countries of residence when they have been forced to marry abroad if they cannot prove that there has been coercion and that they have the capacity to reintegrate. Moreover, countries such as Spain and Finland that recognise recovery and reflection periods in cases of FM do so only for foreign victims without legal residence.

In conclusion, law-in-books is one thing and law-in-action is another. As far as law-in-books is concerned, this legal analysis clearly shows that the regulation of victimisation protection mechanisms, especially civil and administrative ones, must be improved. Furthermore, the conceptual focus of what is considered FM must be broad-

ened so as not to neglect addressing those marriages contracted using subtler means of commission and those that turn into an FM only after the marriage is contracted. As far as law-in-action is concerned, the institutional approach to FM is still not a priority in any of the four analysed countries, with Germany and Spain even having received warnings from GREVIO for not having addressed this manifestation of violence against women. Although some institutional initiatives have been taken to address FM in Germany, in Catalonia within Spain, and in Finland, the fight against FM is still not high on the political agenda in any of the four analysed countries. Only by giving institutional importance to preventing FM and protecting victims trapped in such marriages – whether or not they have civil effects – will these victims have effective access to justice in these countries.



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Case law and legislative documents

Hallituksen esitys HE 172/2021 vp. Hallituksen esitys eduskunnalle laiksi avioliittolain muuttamisesta ja siihen liittyviksi laeiksi.

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It is never
EASY
to talk
about this

Increasing dialogue, awareness, and victim-centred support for victims of forced marriages