

MODELS OF CRIMINALIZATION OF FORCED MARRIAGE IN EUROPEAN CRIMINAL LAW

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Abstract: *Forced marriage remains one of the most serious violations of individual autonomy and human dignity, disproportionately affecting women and girls within European jurisdictions. This article undertakes a systematic comparative analysis of the legislative models through which European states have chosen to criminalize forced marriage, examining the legal architecture, definitional scope, and sanctioning regimes of each approach. Three principal models are identified and evaluated: the integrated model, in which forced marriage is prosecuted under pre-existing coercion or deprivation-of-liberty norms; the autonomous model, featuring a dedicated criminal offence with independent constituent elements; and the hybrid model, which grafts forced-marriage-specific aggravating circumstances onto existing coercion frameworks. Drawing on doctrinal legal analysis, normative comparison, and legislative history, the study surveys the criminal law of the United Kingdom, Germany, Belgium, Norway, Denmark, Switzerland, Austria, and France, as well as the obligations arising from Article 37 of the Council of Europe Istanbul Convention (2011) and the monitoring findings of the GREVIO expert body. The research demonstrates that autonomous criminalization, complemented by extraterritorial jurisdiction and victim-centered support mechanisms, produces the most effective protective outcomes. Significant gaps remain in definitional consistency, evidentiary standards, and cross-border cooperation. The article concludes by proposing core normative elements for an effective criminalization model and identifying directions for future comparative research and potential EU-level harmonization.*

Key words: *forced marriage, criminalization models, European criminal law, Istanbul Convention, gender-based violence, comparative criminal law*

JEL: K14, K33, K38

Introduction

Forced marriage constitutes a fundamental violation of individual autonomy and human rights, manifested through the coercion of a person into entering into a marriage without their free, informed, and full consent. Unlike arranged marriage, in which the parties ultimately give their consent, forced marriage involves the use of physical, psychological, economic, or cultural pressure, sometimes taking the form of fraud or abduction. The phenomenon predominantly affects women and girls; however, recent European statistics indicate a significant presence among male minors as well (FRA, 2023).

The criminal law relevance of the topic is amplified by two converging realities: on the one hand, the adoption of the Council of Europe's Istanbul Convention (2011), which imposed an explicit obligation on member states to criminalize forced marriage as a distinct criminal offense; on the other hand, the rise of "forced marriage tourism," whereby victims are taken to other states for the purpose of concluding a marriage, thereby circumventing the legal protection of their country of residence. Data from the European Union Agency for Fundamental Rights (FRA) in 2023 confirm that, between 2018 and 2022, over 2,800 cases of forced marriage were recorded in EU Member States, with a high estimated level of underreporting.

The objectives of this research are: (1) to identify and systematize legislative models for the criminalization of forced marriage in European criminal law; (2) to conduct a comparative analysis of the constituent elements of the offense across different legal systems; (3) to assess the effectiveness

of each model from the perspective of victim protection; and (4) to identify the essential normative elements of an effective model of criminalization. The methodology employs the doctrinal method, the comparative method, normative legal analysis, and the examination of GREVIO reports monitoring the implementation of the Istanbul Convention.

Basic content

Article 37 of the Council of Europe Convention on preventing and combating violence against women (CETS No. 210, Istanbul, 2011) obliges States Parties to criminalize two distinct acts: (a) coercing an adult or a minor into entering into a marriage; and (b) luring or retaining a person in the territory of another state for the purpose of forced marriage. The Explanatory Report to the Convention specifies that the notion of "coercion" must be interpreted broadly, encompassing psychological pressure, emotional blackmail, deprivation of freedom of movement, and the exploitation of a person's state of vulnerability (Council of Europe, 2011, paras. 191–195).

The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), tasked with monitoring the implementation of the Convention, has found in its reports from 2019–2024 that the transposition of Article 37 remains uneven: some states have adopted specific criminal provisions, others continue to rely on general coercion-related offenses, while others apply intermediate solutions. This diversity constitutes the empirical framework of the present comparative analysis (GREVIO, 2024).

The integrated model is defined by the absence of a specific criminal provision on forced marriage, the act being prosecuted under general legal provisions concerning coercion, deprivation of liberty, threats, or exploitation. The main argument advanced by proponents of this model is that general criminal law provides sufficient tools, and that a distinct criminalization would create legislative overlap and legal uncertainty.

France continues to apply, with certain nuances, an almost integrated model: forced marriage is prosecuted through the concurrence of the offense of coercion (Article 222-33-3 of the French Criminal Code, introduced in 2010), the civil nullity of the marriage, and the possible retention of a minor abroad. Although the 2010 reform increased the penalty for coercion into marriage to three years of imprisonment and a fine, GREVIO noted in its 2019 report that France has not yet created an autonomous criminal offense, which limits the effectiveness of criminal prosecution (GREVIO, 2019).

The autonomous model presupposes the existence of a specific criminal provision, with its own definition of the act, distinct constituent elements, and an independent sanctioning regime. This model offers the advantages of legal visibility, clarification of evidentiary elements, and the delivery of an explicit normative message to society and potential perpetrators.

The United Kingdom has implemented the most developed autonomous system through the Anti-social Behaviour, Crime and Policing Act 2014, which criminalized forced marriage in both England and Wales, as well as in Scotland, with a maximum penalty of 7 years' imprisonment. UK law defines the offense both in terms of physical or psychological coercion and through fraud, while also providing for an explicit extraterritoriality clause applicable to British citizens and residents. In addition, the Forced Marriage (Civil Protection) Act 2007 introduced civil protection orders, thus creating a dual civil-criminal institutional response mechanism.

Germany adopted in 2011 §237 of the Criminal Code (StGB – Zwangsheirat), establishing an autonomous offense punishable by 6 months to 5 years' imprisonment, increased to at least 2 years when the victim is a minor. Prior to the reform, the act was prosecuted only under §240 StGB (general coercion). The new provision also includes the offense of transporting the victim to another state (§237(2) StGB), thereby giving effect to the obligation set out in Article 37(2) of the Istanbul Convention (Strafgesetzbuch, 2011).

Belgium criminalized forced marriage in 2013 through Article 391sexies of the Belgian Criminal Code, with penalties ranging from 1 to 5 years, increased in cases involving minor victims. A

distinctive feature of this provision is the explicit criminalization of three modalities: coercion, deception, and abuse of authority or of a situation of vulnerability the latter significantly broadening the scope of application and representing a relevant normative innovation for legal systems adopting the autonomous model (Belgian Criminal Code, 2013).

Norway (§253 of the Penal Code, punishable by up to 6 years' imprisonment) and Denmark (§260a of the Penal Code, 4 years) have served as reference models for European states, both adopting forced marriage as an autonomous criminal offense prior to the adoption of the Istanbul Convention and including clear extraterritoriality clauses. Institutional practice in Norway and Denmark demonstrates, after two decades of application, that the effectiveness of criminal provisions is contingent upon the existence of specialized investigative units and an integrated system of support for victims (Anitha and Gill, 2015).

The hybrid model combines elements of the two aforementioned approaches, incorporating forced marriage as a distinct criminal offense while maintaining a close systematic connection with general provisions on coercion, thereby preserving the coherence of the criminal code's structure. Switzerland provides a paradigmatic example: Article 181a of the Swiss Criminal Code (introduced in 2013) criminalizes forced marriage as a separate offense punishable by up to 5 years' imprisonment, while retaining Article 181 (general coercion) as a subsidiary provision. The extraterritoriality clause is explicit, and the minimum number of years of residence required for the application of the provision has been the subject of significant legislative debate (Swiss Criminal Code, 2013).

Austria adopts a variant of the hybrid model through §106a of the Austrian Criminal Code, which defines forced marriage as an aggravated form of coercion (§105), with an increased penalty ranging from 1 to 5 years' imprisonment. This structure offers the advantage of systematic coherence; however, it also reveals the drawback that the constituent elements are partially dependent on the interpretation of the underlying provision, thereby generating practical uncertainty in its application (Austrian Criminal Code, 2006).

The comparative examination of the constituent elements of the offense across the analysed systems reveals significant differences with regard to the objective element (*actus reus*), the subjective element (*mens rea*), and the sanctioning regime, as summarized in the following table:

Table 1. Comparative analysis of models for the criminalization of forced marriage in selected European states

State	Model	Legal basis	Max. penalty	Extraterritoriality	<i>Actus reus</i> modalities
United Kingdom	Autonomous	ABCPA 2014	7 years	Yes	Coercion, fraud, deception
Germany	Autonomous	§237 StGB	5 years	Partial	Physical/psychological coercion
Belgium	Autonomous	Art. 391sexies	5 years	Yes	Coercion, fraud, abuse of vulnerability
Norway	Autonomous	§253 Straff.	6 years	Yes	Coercion, fraud, transportation
Denmark	Autonomous	§260a Straff.	4 years	Yes	Coercion, transportation
Switzerland	Hybrid	Art. 181a CP	5 years	Yes	Coercion, fraud
Austria	Hybrid	§106a StGB	5 years	Partial	Aggravated coercion
France	Integrated	Art. 222-33-3	3 years	No	General coercion

Source: Prepared by the author based on comparative national legislation and GREVIO reports (2019–2024).

From the perspective of *actus reus*, the Northern European and British autonomous models provide the broadest coverage, encompassing not only physical or psychological coercion, but also deception,

abuse of authority, exploitation of vulnerability, and the cross-border transportation of the victim. This normative expansion corresponds to criminological realities: applied research shows that a significant proportion of forced marriage cases do not involve direct physical violence, but rather subtle forms of family pressure, emotional blackmail, or social isolation (Chantler et al., 2017).

With regard to *mens rea*, all the analyzed systems require direct intent, namely the perpetrator's awareness of the victim's lack of consent and the will to compel them to enter into marriage. Doctrinal debate focuses on the treatment of situations of "*wilful blindness*," in which the perpetrator claims not to have perceived the absence of consent; British and Norwegian legislation have evolved toward an objectified approach, assessing whether a reasonable person would have perceived the lack of consent (Anitha and Gill, 2015).

The sanctioning regime varies between 3 years (France, integrated model) and 7 years (United Kingdom, autonomous model) for the basic form, with significant increases in cases involving minor victims. In its 2019–2024 reports, GREVIO has recommended a minimum threshold of 5 years as an appropriate European standard, emphasizing that the severity of sanctions must be accompanied by effective procedural mechanisms, particularly regarding the protection of witnesses and victims (GREVIO, 2024).

Recent years have witnessed an intensification of debates regarding European harmonization in this field. The Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence (COM/2022/105), presented by the European Commission in March 2022, initially included provisions relating to forced marriage, which generated discussions concerning the legal basis of the EU's competence in criminal matters. The final Directive, adopted in 2024, retained a common minimum framework on gender-based violence, leaving it to the Member States to define precisely the related offenses, including forced marriage (European Parliament, 2024).

At the level of institutional practice, France announced in 2023 a national action plan on gender-based violence that includes reconsideration of the criminalization of forced marriage, while Italy held parliamentary debates in 2022–2023 regarding the adoption of a model closer to the autonomous approach. These developments indicate a convergent trend toward the autonomous model as an emerging European standard (FRA, 2023).

The effectiveness of any model of criminalization is fundamentally dependent on the quality of procedural-criminal mechanisms and victim protection frameworks. European criminological research consistently shows that, in the absence of specialized support services, victims of forced marriage are often reluctant to file criminal complaints. This reluctance is primarily driven by fears of family retaliation, the potential loss of custody of their children, social exclusion from their communities, and the lack of independent financial resources (Chantler et al., 2017). Consequently, an effective institutional response cannot be limited to the mere existence of a criminal provision; rather, it must incorporate a comprehensive and integrated system for the identification, assistance, and reintegration of victims.

From a procedural-criminal perspective, states that have adopted the autonomous model have developed distinct institutional practices. The United Kingdom, for example, established the Forced Marriage Unit (FMU), an interministerial body (involving the Home Office and the Foreign Office) specialized in handling cases of forced marriage with an international dimension. In 2022 alone, the FMU handled 1,438 calls, of which 24% concerned minor victims (FMU Annual Review, 2022). Similarly, Norway and Denmark have implemented specialized counseling centers for victims, as well as cross-border alert systems that facilitate the rapid exchange of consular information when a victim is detained abroad.

From an evidentiary standpoint, the specific nature of the offense gives rise to particular challenges: the absence of neutral witnesses, the uncertain probative value of marriage documents issued in foreign jurisdictions, and the inherent difficulty of proving the lack of consent before a court. British

practice has evolved toward the acceptance of indirect evidence and the use of cultural expert testimony during trial proceedings, acknowledging that traditional evidentiary standards are often inadequate for offenses committed within closed family environments (Home Office, 2023). In addition, Germany introduced in 2021 the possibility of remote audiovisual testimony for victims in forced marriage proceedings, with the aim of reducing the risk of intimidation in the courtroom. International cooperation represents a crucial dimension in this field, particularly in cross-border cases. The Istanbul Convention (Articles 62–65) imposes obligations on states to cooperate in the investigation and prosecution of covered offenses, including forced marriage. In practice, however, cooperation mechanisms remain insufficient. Differences in the legal definitions of the offense across states create obstacles in the application of the principle of double criminality within extradition procedures and European arrest warrants. This challenge constitutes one of the strongest arguments in favor of further legislative harmonization at the European level (European Parliament, 2024).

Conclusions

The comparative study of models for the criminalization of forced marriage within European criminal law reveals a notable legislative evolution and a clear trend toward convergence on the autonomous model, initially adopted by the Nordic countries and subsequently reinforced by the obligations under the Istanbul Convention. The principal findings of this analysis can be systematically outlined as follows:

First, the autonomous model of criminalization proves to be superior to other models from the perspective of victim protection. Establishing forced marriage as a distinct offense, with its own defined constitutive elements, provides legal clarity, facilitates evidentiary work, and sends a clear normative message to society and potential perpetrators. The experience of the United Kingdom, which has developed the most comprehensive system including complementary civil mechanisms, specialized investigative units, and an extraterritoriality clause serves as a benchmark for other European jurisdictions seeking to enhance the effectiveness of their legal frameworks.

Second, the essential normative components of an effective criminalization model include:

- (a) a consent-based definition encompassing all forms of coercion, whether physical, psychological, fraudulent, or involving abuse of vulnerability;
- (b) criminalization of cross-border transportation of the victim;
- (c) extraterritorial clauses applicable to both citizens and residents;
- (d) aggravating provisions for cases involving minor victims;
- (e) procedural mechanisms ensuring immediate protection of victims;
- (f) complementarity with civil protection instruments to provide a holistic response.

Third, the research highlights the limitations and challenges of current normative frameworks. Systematic underreporting remains a major obstacle, driven by family and cultural pressures, economic dependence of victims, and fear of social stigma. Additionally, unresolved tensions exist between the efficacy of criminal prosecution and the interests of the victim, as criminal proceedings can exacerbate the victim's situation when support mechanisms are insufficient or poorly coordinated. Future research directions could include empirical assessments of the effectiveness of existing criminal provisions through analysis of prosecution and conviction rates comparative examination of institutional practices for identifying and assisting victims, and studies on the feasibility of implementing a harmonized European instrument, particularly in light of ongoing developments in the EU legislative framework on gender-based violence.

This detailed analysis underscores that legal reform alone is insufficient; an effective response requires an integrated system that combines clear criminal definitions, robust procedural safeguards, and complementary civil protections to address the multifaceted realities of forced marriage.

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