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**The standards of the Istanbul Convention and GREVIO’s jurisprudence on forced marriage:**

**a contribution towards achieving a comprehensive response**

**to child sexual exploitation**

The present document was prepared under the responsibility of the Secretariat of the monitoring mechanism of the Council of Europe Convention on Preventing and Combating Violence against women and Domestic Violence (CETS No. 210 - Istanbul Convention). Its purpose is to illustrate how the standards of the Istanbul Convention can serve to reinforce States’ overarching legal-normative framework and institutional capacity to address the vulnerability of girl victims of forced marriage to sale and sexual exploitation.

In the light of research showing that certain forms of gender-based violence against girls, in particular forced marriage, can act as a conduit to their sexual exploitation, this document highlights the relevance of the Convention’s provisions for the purposes of providing States with a comprehensive policy framework to prevent forced marriages, protect victims and girls at risk of forced marriage and punish individuals responsible for inflicting such a violence. Owing to the scope of the Istanbul Convention, which applies to violence against women, including girls, the focus of this document is on girls at risk of forced marriage.

This contribution draws further from the unique expertise of the monitoring mechanism of the Istanbul Convention, namely the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). To date, GREVIO has completed nine baseline country evaluations regarding Albania, Austria, Denmark, Finland, Monaco, Montenegro, Portugal, Sweden, Turkey[[1]](#footnote-1).

The links between forced marriage and the sale and sexual exploitation of girls

The act of coercing a child to enter into marriage represents a serious human right violation, which predominantly affects girls. Child and/or forced marriage aggravate brides’ constrain of movement and isolation and makes them vulnerable to sexual abuses and sexual exploitation[[2]](#footnote-2). Child marriage often leads to girls’ school drop-out, early sexual initiation and pregnancy, and threaten their rights to self-determination by confining them in the domestic sphere. When it involves the commodification of marriage through the payment of a dowry or any type of financial contribution, child marriage and/or forced marriage can be regarded as a form of sale of children[[3]](#footnote-3). The economic transaction inherent to the marriage contract leads to the attachment of an economic value to the bride and can exacerbate the perception that she has become the property of her husband’s family, who can then exert a certain control over her sexual and

reproductive rights. Where a power of ownership or domination is exercised over the bride, child marriage can equate with and/or lead to economic and/ or sexual exploitation, especially when it is associated with forced labour, domestic servitude, human trafficking, slavery and child prostitution[[4]](#footnote-4).

By providing States with a comprehensive framework to address forced marriages of women and girls, the standards of the Istanbul Convention and the jurisprudence of its monitoring body, the GREVIO, can contribute to address an important enabler/contributing factor of the sale and sexual exploitation of girls.

1. Provisions of the Istanbul Convention applicable to forced marriage: an overview

The Istanbul Convention is the first legally binding regional instrument to provide a definition of forced marriage and to develop various provisions aiming at building comprehensive national legal frameworks protecting victims of forced marriage. Article 37 of the Istanbul Convention requires States to ensure the criminalisation of two distinct intentional conducts associated to forced marriage: forcing an adult or a child to enter into a marriage and luring an adult or a child abroad with the purpose of forcing her/him to enter into a marriage. The term “forcing” refers to physical and psychological force where coercion or duress is employed. The offence is complete when a marriage is concluded to which at least one party has – owing to the above circumstances – not voluntarily consented to. Article 41 of the Convention requires further that legislative or other measures be in place to establish as an offence, when committed intentionally, aiding or abetting, and attempting to commit a forced marriage. Pursuant to Article 55 of the Convention, investigations and prosecutions of forced marriage should not be wholly dependent upon a report or complaint filed by the victim, and proceedings should be able to continue even if the victim withdraws her or his statement or complaint. Article 44 of the Convention further serves to regulate the issue of jurisdiction whenever an alleged offence of forced marriage raises international law issues, either with respect to the location where the offence was committed or the nationality and place of habitual residence of the victim and/or the perpetrator.

In addition to criminal law provisions, the Istanbul Convention also addresses the civil consequences of forced marriage. Under Article 32, Parties must take measures to ensure that forced marriage can be voidable, annulled or dissolved without placing any undue financial or administrative burden on the victim. Moreover, States are required to take measures to provide victims with compensation (Article 30) and civil remedies against the perpetrator, as well as against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers (Article 29).

Migrant and asylum-seeking women and girls who are victims of forced marriage are also afforded protection under the Istanbul Convention. Article 59 makes it compulsory to entitle them to an autonomous resident permit in the event they risk losing their residence status following the dissolution of the marriage. Under paragraph 4 of this article, victims of forced marriage who have been brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, should be entitled to regain their status. In addition, Article 60 imposes upon States the duty to ensure that gender-based violence against women, including forced marriage, may be recognised as a form of persecution within the meaning of the Geneva Convention on refugees. Gender-sensitive asylum procedures and reception procedures are furthermore required under this article to allow women and girls to speak their truth, report the violence and be protected against further victimisation, including the risk of becoming victims of trafficking and sexual exploitation.

The Istanbul Convention advocates a holistic response to all forms of violence against women and girls. Hence, it requires the criminal response to forced marriage to be complemented through prevention efforts and the provision of general and specialised support services to victims. The existence of adequate protection services can play an essential role in averting the risk of victims of forced marriage becoming more vulnerable yet to repeat victimisation and in enabling them to escape the violence.

With respect to prevention, the Convention establishes States’ duty to take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles of women and men. It requires furthermore that measures be in place to ensure that culture, custom, religion, tradition or so-called “honour” are not considered as justification for any acts of violence covered by the scope of the Convention. This is of particular relevance for the violence of forced marriage, which continues to be minimised or tolerated – including at the institutional level - for reasons related to culture and traditions.

As regards protection, a general requirement under the Istanbul Convention is that there should be appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities, as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims. This requirement is the reflection of the need to involve all relevant stakeholders, including in particular victims support organisations specialised in addressing certain forms of violence, such as forced marriages and so-called honour-related crimes, in order to achieve effective protection. Another general requirement under Article 18 of the Convention is that measures of support and protection should address the specific needs of vulnerable persons, including children, and be made available to them. Moreover, the provision of such services should not depend on the victim’s willingness to press charges or testify against any perpetrator: this is of particular relevance in the case of forced marriages, where the victim may be reluctant to provide evidence against any parent or relative involved in forcing him or her to contract a marriage. Where legal proceedings have been instituted, Article 56.2 of the Convention requires that child victims be afforded special protection measure based on the best interest of the child. The types of support that services dedicated to victims of forced marriage need to offer include *inter alia* providing shelter and safe accommodation, immediate medical support, the collection of forensic medical evidence in relation to rape and sexual assault, short and long-term psychological counselling, trauma care, legal counselling and telephone helplines to direct victims to the right type of service. Moreover, victims of forced marriage should have access to appropriate restraining or protection orders which much be available irrespective of, or in addition to, other legal proceedings.

Having regard to the fact that forced marriage can operate as a channel to sexual victimisation, the Convention’s provisions which relate to the definition of sexual violence, including rape (Article 36) and services specifically addressing victims of sexual violence (Article 25 on rape crisis or sexual violence referral centres) are also of relevance to victims of forced marriage.

1. The analysis of measures taken by States to address forced marriage in the evaluation reports of the monitoring mechanism under the Istanbul Convention (GREVIO)

The following section highlights GREVIO’s findings related to forced marriage, including in particular forced marriage involving child victims.

1. *Laws and practices on child marriage*

While acknowledging the differences between child and forced marriages, GREVIO has underlined in its reports[[5]](#footnote-5) that the young age of brides means that they are at a higher risk of not being able to express their full and free consent to a marital union, or to resist a forced marriage. This is in line with the wide acknowledgment made in international treaties that child, early and forced marriage constitute harmful practices linked to other human rights violations, which have disproportionately negative impact on women and girls.

In its [report on Albania](https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7) , GREVIO noted that legislation allowing the marriage of children by derogation of a court could be improved by setting a minimum age under which derogations would not be possible. GREVIO noted further that court practices could be improved by incorporating safeguards to ensure that the child enters the marriage with his or her full and informed consent [[6]](#footnote-6) In its [report on Finland](https://rm.coe.int/grevio-report-on-finland/168097129d), GREVIO welcomed the 2018 amendment of the Finnish Marriage Act which removed the possibility of children getting permission to marry [[7]](#footnote-7). In its report on Turkey, GREVIO noted positively that the minimum legal age for girls to marry was raised in 2001 to equate with the minimum age applying to boys[[8]](#footnote-8).

1. *Laws and practices on unregistered unions involving children*

A general observation raised in GREVIO’s reports is that the applicability of State measures to tackle forced marriage should not be made dependent on the registration of the marriage. Considering that unregistered marriages and customaryunionscan be associated with forced marriage, GREVIO has taken the position that the unofficial character of customary unions should not prevent their criminalisation where they qualify as forced marriage under the terms of Article 37 of the Istanbul Convention[[9]](#footnote-9).

In its [report on Montenegro](https://rm.coe.int/grevio-report-montenegro/16808e5614), GREVIO welcomed the introduction in the country’s criminal code of a provision specifically criminalising the conduct of any person in a position of authority or trust - including parents or guardians - forcing or threatening a child to cohabit in a customary marriage with an adult. GREVIO expressed nevertheless concern in respect of the legal provisions barring prosecution of such acts in case the customary union turns into a legally registered marriage. GREVIO noted that such a legal mechanism can trigger social pressures on victims to contract a civil marriage in order to prevent the prosecution of the perpetrators[[10]](#footnote-10).

In its [report on Turkey](https://rm.coe.int/eng-grevio-report-turquie/16808e5283), GREVIO commented on the 2017 legislative amendment to Law No. 5490 on Civil Registration Services. This amendment, which was introduced with the stated aim of limiting the number of unregistered marriages, entitles civil servants employed in Turkey’s Directorate of Religious Affairs (*Diyanet*), or religious leaders (muftis) to perform civil marriages[[11]](#footnote-11). Drawing from prevalence data showing that most marriages involving girl brides were performed by clerics, GREVIO stressed the need for civil servants of *Diyanet* and muftis to consistently verify that couples have attained the age to marry and that there are no legal impediments to the marriage. GREVIO therefore recommended that measures be taken to enforce, including by means of sanctions, the responsibility of state officials and religious leaders entitled to perform civil marriages to prevent the conclusion of illegal child and forced marriages. GREVIO also recommended that the Turkish authorities promote the development and use of reliable birth registration systems.[[12]](#footnote-12)

1. *Law and practices on the criminalisation of forced marriage*

In its [report on Turkey](https://rm.coe.int/eng-grevio-report-turquie/16808e5283), GREVIO highlighted the weaknesses of the legal framework applying to the criminalisation of forced marriage which is possible under the provisions on deprivation of liberty, human trafficking and sexual assault. With respect to child marriage, GREVIO noted that to regulate forced marriage exclusively within the frame of the criminal provisions on sexual violence was particularly problematic as the victims themselves might face criminal responsibility for sexual acts, instead of the adults responsible for enforcing the marriage upon the children[[13]](#footnote-13). To address these shortcomings, GREVIO urged Turkey to recognise forced marriage as an offence under criminal law in its own right. GREVIO also recommended the Turkish authorities improve data collection on child and forced marriages and develop comprehensive measures to prevent and combat these phenomena, including among refugees. GREVIO’s report stressed that such policies should address the underlying social, economic and cultural drivers of child and forced marriages, including by developing awareness raising campaigns among parents, in schools and communities.[[14]](#footnote-14)

In its [report on Albania](https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7), GREVIO identified important gaps in the formulation and implementation of the laws criminalising forced marriage. GREVIO noted that the low penalties of a fine, or imprisonment up to three months, risked having a scarce deterrent impact. It noted further that the conditions and statutory limitations under which a forced marriage may be invalidated were particularly restrictive[[15]](#footnote-15). To tackle these lacunae, GREVIO strongly encouraged the Albanian authorities to increase the criminal sanctions which apply to forced marriage, as well as to ease the conditions in which forced marriages can be declared void or annulled, with the aim of avoiding to place an undue financial or administrative burden on the victim.[[16]](#footnote-16)

In its [report on Sweden](https://rm.coe.int/grevio-inf-2018-15-eng-final/168091e686), GREVIO noted that although the number of reported forced marriages to law enforcement agencies had increased following the introduction of legislation criminalising such marriages, prosecution and conviction rates remained low[[17]](#footnote-17).

In several evaluation reports[[18]](#footnote-18), GREVIO found gaps in the criminal legislation addressing forced marriage inasmuch as they failed to criminalise the intentional conduct described in Article 37, paragraph 2 of the Convention consisting in “luring (…) 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 (…) child to enter into marriage”.

1. Conclusion

The standards of the Istanbul Convention are recognised as the most advanced treaty provisions to guide States and policy-makers in addressing violence against women and girls. While the scope of the Istanbul Convention does not extend to child sexual exploitation[[19]](#footnote-19), the Convention offers a blueprint for developing laws and policies on forced marriages which can assist all States, beyond the Council of Europe membership, in their attempts to frame effective and comprehensive policies to prevent and combat the sexual exploitation of children victims of forced marriages.

Strategies which address the *continuum* that exists between violence against girls on the one hand, and child sexual exploitation on the other, while being sensitive to the gendered nature of forced marriages, would be key to improving the global multi-stakeholder response to the complex phenomenon of the sale and exploitation of girls.

1. All the information mentioned in section I and II of this report have been extracted from the GREVIO baseline evaluation report published as of September 2019, that are all available on the [website of the Istanbul Convention monitoring mechanism](https://www.coe.int/en/web/istanbul-convention/country-monitoring-work). [↑](#footnote-ref-1)
2. ECPAT International (2015). [*Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage*,](https://www.ecpat.org/wp-content/uploads/2016/04/Child%20Marriage_ENG.pdf) Bangkok, Thailand: ECPAT. [↑](#footnote-ref-2)
3. United Nations (2000)[Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography](https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx), A/RES/54/263 [↑](#footnote-ref-3)
4. ECPAT International (2015). [*Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage*,](https://www.ecpat.org/wp-content/uploads/2016/04/Child%20Marriage_ENG.pdf) Bangkok, Thailand: ECPAT [↑](#footnote-ref-4)
5. GREVIO Baseline evaluation report on Albania, paragraph, 144, p.49; GREVIO Baseline evaluation report on Turkey, paragraph 238, p.80. [↑](#footnote-ref-5)
6. GREVIO Baseline evaluation report on Albania, paragraph, 144, p.49 [↑](#footnote-ref-6)
7. GREVIO Baseline evaluation report on Finland, paragraph 174, p.45 [↑](#footnote-ref-7)
8. GREVIO Baseline evaluation report on Turkey, paragraph 236, p.79 [↑](#footnote-ref-8)
9. GREVIO Baseline evaluation report on Turkey, paragraph 241, p.81

GREVIO Baseline evaluation report on Montenegro, paragraph 184, p.46 [↑](#footnote-ref-9)
10. GREVIO Baseline evaluation report on Montenegro, paragraph 185, p.46 [↑](#footnote-ref-10)
11. GREVIO Baseline evaluation report on Turkey, paragraphs 242 and 243, p.81-82 [↑](#footnote-ref-11)
12. Ibid, paragraph 245, p.83 [↑](#footnote-ref-12)
13. Ibid, paragraph 235 and 240 , p. 79 and 81 [↑](#footnote-ref-13)
14. Ibid, paragraph 24 , p.83 [↑](#footnote-ref-14)
15. GREVIO Baseline evaluation report on Albania, paragraphs 141 and 142, p.48 [↑](#footnote-ref-15)
16. Ibid, paragraph 145, p.49 [↑](#footnote-ref-16)
17. GREVIO Baseline evaluation report on Sweden, paragraph 188, p.46 [↑](#footnote-ref-17)
18. GREVIO Baseline evaluation report on Montenegro, paragraphs 191 and 192, p.47

GREVIO Baseline evaluation report on Portugal, paragraphs 171 and 172, p.48

GREVIO Baseline evaluation report on Finland, paragraph 175, p.45 [↑](#footnote-ref-18)
19. Child sexual exploitation falls under the remit of other Council of Europe instruments, such as the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) and the Convention on Action against Trafficking in Human Beings (CETS No. 197). [↑](#footnote-ref-19)