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Intervention Handbook for Cases of Child/Forced Marriages

-Methods of Intervention and Recommendations-



Kanton Basel-Stadt

Handbook created within the project “Reducing school dropout among Roma girls through an intersectional approach”, implemented with the support of the Canton of Basel-Stadt, Switzerland.

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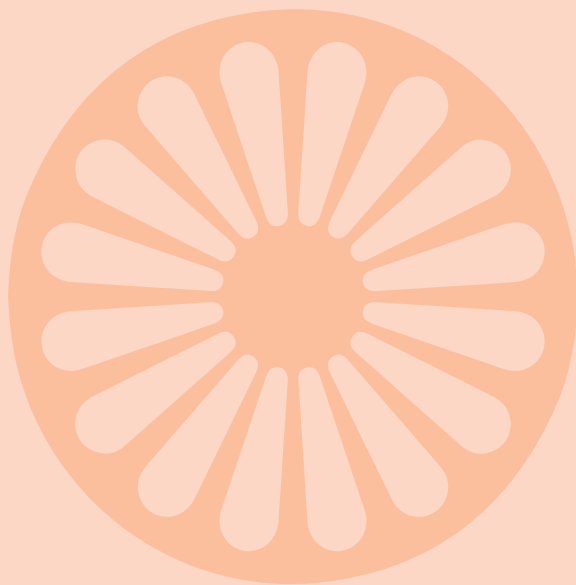
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I. Introduction

Through this handbook, we propose a paradigm change, namely: focusing on the victim from an intersectional perspective in which any type of argument and/or justification is to be avoided. We are at a point in which any blaming at the institutional or society/community level will distract us from the substantive issue: how can we intervene in situations of child or forced marriage?

Globally, there is a whole specialized literature that treats **child marriages and forced marriages as a form of gender violence and a grave human rights violation**.

The Istanbul Convention defines forced marriage as **a type of gender violence**, and so does the European Union through various directives such as Directive 2011/36/EU **on preventing and combating human trafficking and protecting its victims**¹ or the Directive for Protecting Victims of Crime².

Forced marriages can affect all categories of people, girls and boys or adults. There is, however, a gender dimension regarding this phenomenon that especially affects minor girls and young women. In 2018, UNICEF³ estimated that 1 in every 5 girls worldwide is married, which means a proportion of 21%. Since adopting the Istanbul Convention, more European states have adopted a normative pattern by changing the Criminal Code, increasing the age of marriage and consent to sexual intercourse, or preventing the reunification of families with underage wives. Great Britain adopted a protection

order regarding forced marriage in 2008 (see more details in Chapter VII). At the level of Romanian society, unfortunately, the subject is loaded with prejudices, being most often associated with ethnicity, religion, traditions, or culture, which has prevented for too long any type of initiative to ensure the protection of victims of this type of gender violence.

In public speech, the argument of tradition must be criticized and sanctioned for several reasons. First of all, it places the responsibility on groups and individuals to solve a type of gender violence that cannot be addressed this way. On the other hand, this type of argument normalizes a type of violence against girls and women, which contributes to the under-reporting of the phenomenon. Let us not forget that placing the responsibility on group/individual represents one of the main reasons the Romanian state, throughout time, has delayed adopting measures to prevent, combat, and protect victims of gender-based violence. Not least, we believe that any discussion or decision of a court of law that culturally justifies this type of violence distracts from what should be a priority and from the first aid given to minor or adult victims. **There should be no negotiation on establishing this priority.**

1 <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32011L0036>.

2 <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32012L0029>.

3 <https://data.unicef.org/resources/child-marriage-latest-trends-and-future-prospects/>

This handbook does not confirm the existence of a general phenomenon. We believe that even if there were only one case in a particular county, professionals should be prepared to respond appropriately to protect victims. On the other hand, the insufficient data and information at the national level, corroborated with the lack of specialized services, determine the need to publish such a handbook in Romania, which will support the experts who encounter such cases.

This handbook has an extremely difficult mission: to propose an intervention method for the cases of child marriages and forced marriages in Romania. The elaboration of such a handbook required years of work for the E-Romnja Association, both in gender-based violence projects and in handling cases encountered in the communities where it activates or other regions of the country.

Thus, between 2016 and 2019, E-Romnja – the Association for Promoting Roma Women's Rights ran an extensive program dedicated to this topic in Giurgiu and subsequently extended to Valea Seacă (Bacău County) and Mizil (Prahova County). Our initiative was suspended once the COVID-19 pandemic started but was restarted at the beginning of 2023 in Giurgiu and Bacău since the actual context revealed the necessity of its continuation.

Therefore, within the pages of this handbook, you will find both the information that has been processed throughout the years from different sources (institutional or personal experiences), and also tested and implemented by us (E-Romnja) or other NGOs from Romania or other states. You will also find information regarding the national and international legal framework, definitions, and frameworks that align to global standards, the legislation and jurisprudence of other states, but also a series of criteria that would help us identify:

- the victim and not the cultural or ethnic profile;
- what to do and what not to do when we want to support a minor or an adult who is facing this situation;
- what strategies to approach, and how we can contribute to the prevention of this type of gender violence.

For the development of this handbook, we took inspiration from what other states from Europe, such as Spain, Germany, or France, and states from Africa or India have done. Although we do not promote a specific model, since we presently cannot talk about “successful models” in the fight against gender-based violence, we believe that it is paramount to refer to other states' interventions.

We are aware that there are still numerous legal gaps that do not create a favorable context for the victims of this type of violence, and there is also too little implementation of legislation and services for the protection of victims of domestic violence in different counties.

We are also aware that presently, we cannot provide all the answers given the complexity of the topic, and in this sense, this handbook is not an exhaustive research but a start which we hope will be improved in the following years. This is why the handbook has a formula that encourages the people who will go through it to note, adapt depending on the context, and propose other solutions/methods that we hope will have results for the benefit of the victims.

In conclusion, we call for the subject to be treated with special attention, respect, and dignity for those who go through such experiences, and we hope you will change your perspective by reading this handbook.

II. Handbook Methodology

Due to the topic's complexity, for the elaboration of the handbook, we used qualitative research methods that facilitate its profound understanding and require flexibility and openness to make room for the nuances related to institutional behavior, experiences, and interventions.

For this objective, during July – November 2023, we run a series of workshops with the representatives of public authorities, respectively professionals within the Child Protection Directorates, social assistance, police, and schools in Giurgiu and Bacău. During the workshops, we have identified and analyzed cases, intervention methods, legislation and gaps, institutional means to address the cases, and the role and responsibility of public authorities.

Also, in support of this handbook, a qualitative methodology research report was elaborated and run between August and September 2023 and which included, in addition to the national and international legal framework analysis, a series of interviews with the professionals involved in criminal justice proceedings (judges, prosecutors, lawyers, and policemen).

At the same time, a focus group was organized, consisting of Roma women – experts in different NGOs and/or public institutions, who were selected for handling child or forced marriage cases in their activity.

All discussions held for the development of this handbook sought to collect points of view and experiences related to the prevention and combating of underage marriage, the rights of victims, available services, and inter-institutional collaboration for their assistance.

Who is the Handbook for?

The handbook is for the following categories:

- professionals providing social or support services (The General Directorates of Social Assistance and Child Protection, Social Assistance Departments, or NGOs' staff who offer assistance or support services);
- professionals working with judicial bodies and courts;
- trained professionals, such as psychologists or social assistants, who can also be NGOs' staff;
- experts in domains such as Child Protection/ Equal opportunities, Minorities Department, gender equality within different public institutions, Roma County Offices, local experts, school mediators, health experts;
- professionals in the judicial field.

III. Definitions and Delimitations of Child/Forced Marriage

In specialized literature, forced marriage, child marriage, and underage marriage are used interchangeably¹. Although we consider that all three terminologies should be used together, as different studies have shown, we believe that in order to draw attention to this form of gender violence, a term that creates dissonance is needed. Therefore, within the handbook, we choose to use "forced marriage."

In Romania, the legal marriage age for both partners is 18, but by exception or for "solid grounds," the marriage can be legally approved from the age of 16.²

Child marriage is a formal or informal union in which one or both persons are under the age of 18. Underage marriages are forced marriages since minors, not having partial or full capacity, cannot express their consent.

In most countries, the minimum legal age of majority is 18, but there are also countries where this limit is under the age of 18, such as Indonesia (15 years), Ukraine (16 years), or over the age of 18, in Canada (19 years), New Zealand (20 years), and so on.

¹ See the bibliography for the materials used as sources.

² Article 227 of the Romanian Civil Code.

What is Forced Marriage?

It is the union achieved by force, coercion, or enticement of a child or adult and to which at least one of the parties did not consent¹.

Two important elements help to detect a forced marriage:

- one or both parties did not consent. This rule applies in case of the minors between 16 and 18 years or adults;
- one or both parties are under the age of 16², in which case there is no consent, and thus, marriage cannot be legally valid.

What is the consent for marriage?

The verbal or written agreement, freely expressed by both parties in the presence of *the authority competent to solemnize the marriage and of witnesses, after due publicity*, as prescribed by law”.

Definition according to the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages ³

1 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the United Nations in 1999. Romania has ratified the Protocol through Law no. 283/2003, published in the ‘Official Gazette of Romania,’ part I, no. 477 on July 4, 2003.

2 Law no. 217/2023 that will take effect on starting from January 1st of 2024 established that the minimum age for legal consent is 16.

3 Ratified by Romania on December 15, 1992 by Law no. 116, published in the „Official Gazette of Romania,” part I, no. 330 on December 24, 1992.



Check off if you agree:

Consent must be:

- ☐ Freely expressed.
- ☐ Knowingly granted.
- ☐ The person has the freedom to change their mind anytime.
- ☐ The person has the capacity to choose.
- ☐ The person is not afraid.

NO consent for marriage can be required from a minor under the age of 16!

Characteristics of forced marriage:

- most often, forced marriages are informal;
- girls are disproportionately affected compared to boys¹;
- physically violence is not necessarily used, but other forms of psychological pressure;
- control means, and pressure from family or community members are also used;
- they are arranged between families without the involvement of the parties to be married;
- there are also other forms which, usually, the minors cannot explain, such as: intimidation, manipulation, gifts, delusion, blackmail, promise;
- it is not an event but a process;
- the minors are sometimes brought to other towns/counties/countries.



Forced marriage was introduced as a form of gender violence in 2011 through the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention.



¹ Girls represent 85% of the cases of marriage, according to the UNICEF 2018 Report 'Child Marriage: Latest trends and future prospects', <https://data.unicef.org/resources/child-marriage-latest-trends-and-future-prospects/>.

3.1. Principles


During the intervention regarding forced marriages, there is a golden rule, which is **“only one chance.”** This is why, professionals in countries such as Great Britain, Sweden, or Spain insist on the fact that you have only one chance to talk to the victim of a forced marriage, a “chance” that must be used to provide advice and assistance.

The intervention should take into account the following:

- to use a human rights-based approach;
- to be focused on the victim and not on "who is the family? What do they do?" etc.;
- the age and the context;
- to be personalized according to the needs of the victim/victims.

Forced marriages are very difficult to report as long as the victims are judged through the lens of family/ethnicity.

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- ✓ We apply the “only one chance” rule to find out what happened.

- ✓ There is NO profile of the victim.

- ✓ We do NOT use the “this is how you do things” phrase.

- ✓ We wait for the person to come to us to tell us what happened, but we build a trust framework.

- ✓ We listen to everything they have to say without using an accusatory or investigative tone.

- ✓ We try to create an environment as safe as possible for the victim to open up.

- ✓ We show empathy and understanding.

- ✓ We avoid using appellatives addressed to the victim/victims’ family members.

- ✓ We proceeded ex officio where appropriate.

In which cases should we proceed ex officio?

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Why shouldn't you use the "This is how you do things" phrase?

- ☐ Because for the mind of a minor girl or boy, it means it is a normal thing that should not be reported.
- ☐ Because you create a stereotype or a profile, and this contradicts the reality.
- ☐ Because it is offensive and restrictive.

3.2. What is not acceptable in such cases?

- Do NOT send the person home!
- Do NOT question or doubt what she/he says! Such information does not come out of nowhere.
- Do NOT blame the victim!
- Do NOT say, 'This is how you do things'!
- Do NOT approach the family or friends unless that person expressly requests it!
- Do NOT violate the right of the victim to privacy!
- Do NOT try to mediate the relationship with the family!
- Do NOT contact the community leaders unless that person explicitly requests it!
- Do NOT give legal advice if you do not have that expertise!

3.3. Risk Indicators in Identifying Cases of Forced Marriage

Minor or adult victims under the pressure of entering into marriage frequently display **similar characteristics to sexual violence victims**.

To be handled as a forced marriage case, we recommend the accumulation of at least 5 criteria¹ (see *Chapter 4.2 Intervention Measures*).

Attention!

Presently, there is no agreed-upon criteria list, which leaves most victims without protection.

Criteria that can be evaluated to identify a case:

- More anxious, scared, silent, isolated person.
- She withdraws from school activities and friendships.
- She can have traces of blows on the body.
- She is missing a lot from school and cannot give a clear reason.
- School grades suffer a sudden plummet, and so does the involvement in extracurricular activities.
- She often comes to school with someone else to “protect her at school”.
- She is not allowed to go out by herself.
- She is not allowed to wear pants.
- She attempts to run from home/suicide, etc.
- She has other sisters or brothers who were forcibly married.
- She lies or tells stories that make no sense.
- She has a boyfriend with the consent of the parents.
- Early birth-giving by a student under the age of 16.
- The child marriage practice’s “notoriety” in that community.
- The parents/legal representatives ask for a medical certificate from the General Practitioner to request marriage authorization for a pregnant minor under the age of 16, but the pregnancy is the result of sexual relationships initiated at the age of 15, and the child’s father is with at least 5 years older than the minor mother.
- The parents request a virginity certificate from a gynecologist.



The virginity test at the request of the parents has been banned in Romania since 2022.



IV. How Can the Public Institutions intervene?

4.1. Identifying and Reporting

Most people, minors or adults, do not feel comfortable talking about the situation they are going through for various reasons. Shame, guilt, family attachment, lack of trust in authorities, or social stigma most often determine them not to report such a case. All these things amplify when the victim must communicate with the public authorities. In our experience, but also from other states' experience, the persons who can identify and report such cases are:

- School teachers;
- Experts within the General Directorates of Social Assistance and Child Protection;
- Social Assistance personnel in City Halls;
- Medical personnel;
- Center services personnel for the female victims of gender-based violence;
- Patrol/proximity policemen;
- NGOs' personnel who activate in schools, community centers, communities, etc.;
- health mediators, school mediators;

Write down other people who should proceed ex officio:

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Law no. 272/2004 provides in art. 89, paragraph (2) that any natural or legal person, as well as a child, may notify the General Directorate of Social Assistance and Child Protection in their home county/district to take the necessary measures to protect a child against any form of violence, physical or mental abuse, ill-treatment or negligence. By paragraph (3) of the same article, the employees of social or medical care institutions, both public and private, who, due to the nature of their profession, come into contact with the child and have suspicions about possible abuse or ill-treatment are under the obligation to immediately notify the General Directorate of Social Assistance and Child Protection.

Due to the nature of their profession, most often, the educational or medical personnel identify cases of forced marriages involving at least one minor. The personnel of these institutions should take into account the criteria stated in subsection 3.3 to help identify such a case. At the same time, the personnel should be open-minded to understand the particularities of each case without making use of stereotypes and prejudices.

Recommendation for educational and medical personnel who get into contact with potential victims:

- ✓ Ask respectful questions showing concern for the person's condition.
- ✓ Listen attentively. Don't make any suppositions at this time.
- ✓ Ensure the privacy of the discussion.
- ✓ Evaluate the risks or how urgent the situation is and if there are other physical/emotional/material/logistic, etc. risks. Evaluate, for example, if the victim is safe at that moment.
- ✓ Explain which are the rights and services the victim can benefit from.
- ✓ Discuss about consent.
- ✓ Discuss potential solutions with that person. Possible questions you may ask: whether there is a family member who knows her situation and can aid her or whether she feels comfortable talking in her native tongue.
- ✓ Consult different experts: psychologist, General Directorate of Social Assistance and Child Protection, or Social Assistance Departments (in rural areas) representative.
- ✓ Establish a safety code in the communication with the victim.

Safety code example: if another family member answers the victim's phone, ask about homework.

Give an example of a security code yourself:
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Take note!

- ✓ Throughout the intervention, the central focus is on the minor and her/his best interest.
- ✓ Privacy and discretion are paramount in the process of data collection.
- ✓ Believe the minor if she/he mentions that is forced into marriage.
- ✓ Do not try to talk to the minor in the presence of any of her/his family members (parents/grandparents/brothers or sisters, etc.).
- ✓ Do not disclose to the parents or other relatives what you have found out from the minor.
- ✓ The safety of the minor is an absolute priority!
- ✓ Try to obtain information without involving the family members.



Attention!

Any person can report to the police or the General Directorate of Social Assistance and Child Protection a case of forced marriage **but cannot intervene or mediate such a case in the relationship with the family.**

4.2. Intervention Measures

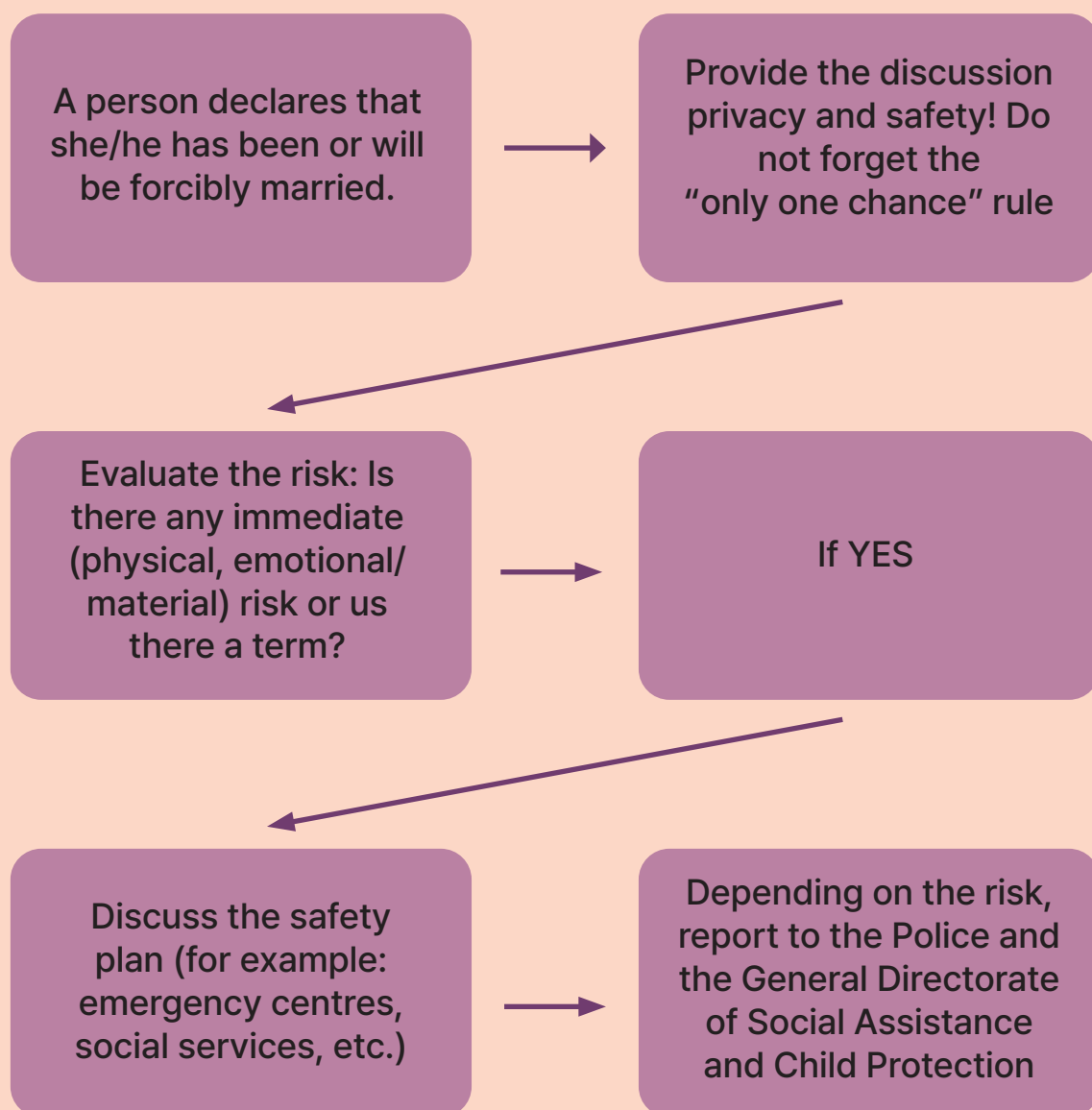
A series of cumulative criteria must be met, but Romania, unfortunately, has no legislation, methodology, and casuistry to intervene in such cases, but rather non-unitary practices, in most cases, as could be observed in the 'Judiciary Inspection Report on the practice of the courts and prosecutor's offices in the investigation and dealing with cases related to sex crimes with minor victims.' Thus, we recommend using the same 5 criteria rules to assess the imminent risk to the integrity of the victim (see subchapter 3.3). Both the facts and the victim's statements will be taken into consideration for reporting. If the victim is unable to answer being unable to speak, you must consider the criteria and the expert's finding or observations.

Advice:

Apply the methodology on domestic violence where possible.

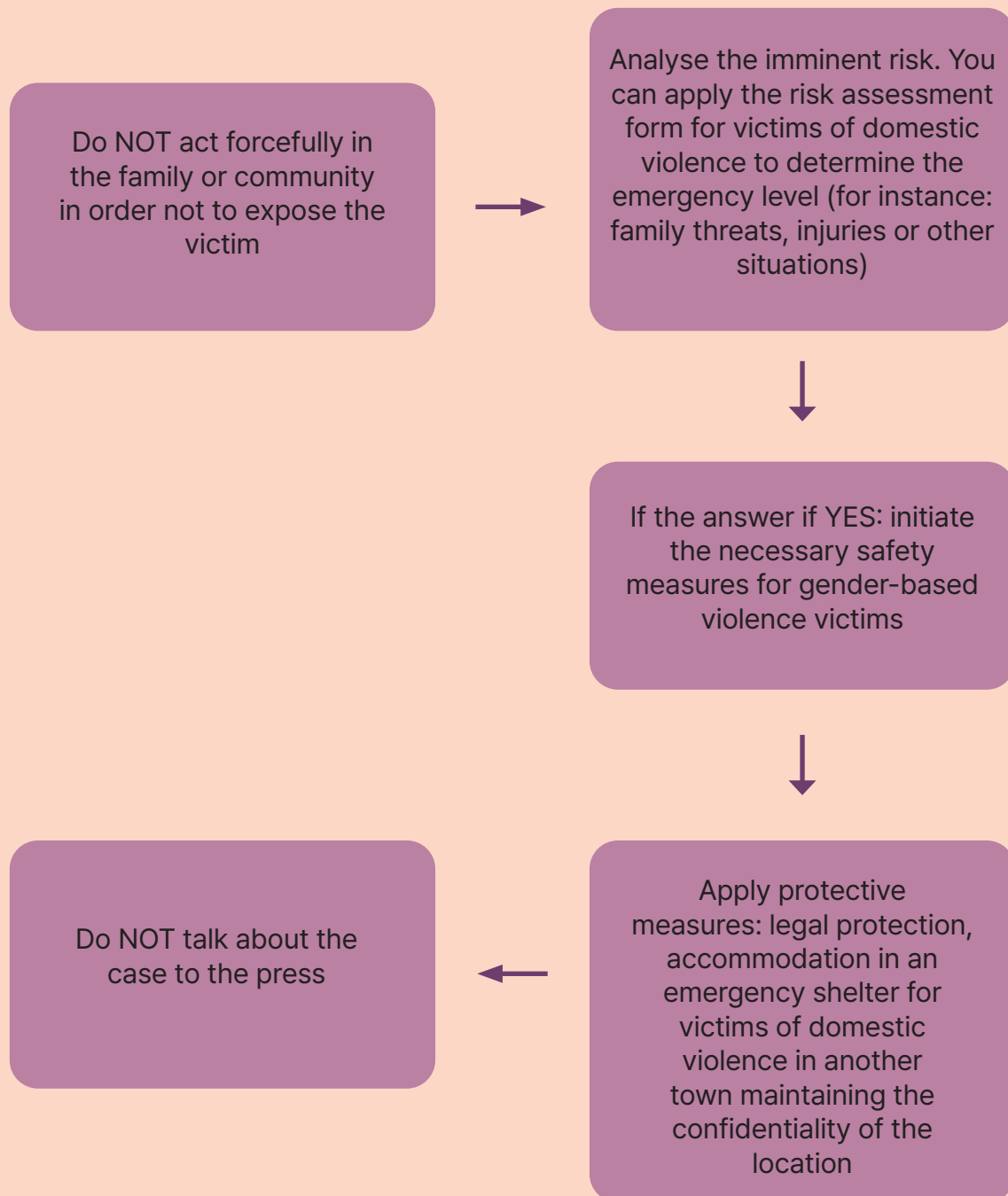
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4.2.1. Intervention Steps for the Experts Identifying a Case Involving an Under 16 Years Old Minor



Once the case is reported, the police must run a criminal investigation.

Intervention steps for the Police and the General Directorate of Social Assistance and Child Protection representatives:



Advice:

Depending on the gravity of the case, you can also use the protection order applicable to the domestic violence victims in the cases of minor victims of forced marriage, given that it is violence committed within the family (see Article 3, Law no. 217/2003).

Attention!

The hearing of a victim of forced marriage cannot take place in the presence of the parents.

In the criminal investigation process, the investigative bodies must:

- ✓ prioritize the interests of the minor victim of violence;
- ✓ not classify a case due to the fact the forced marriage resulted in a child;
- ✓ avoid the mediation/reconciliation with the offender (whether is a parent or the aggressor);
- ✓ intervene along the General Directorate of Social Assistance and Child Protection, and Social Assistance Department professionals.

4.2.2. Intervention Steps for the Experts Identifying a Case Involving an Over 16 Years Old Minor:

- Ensure privacy.
- Apply the “only one chance” rule.
- Gather as much information as possible.
- You must believe, without questioning, but verify the evidence to ensure work accuracy.
 - Ask the victim what type of support she needs.
 - Explain the possible options (depending on the case, number of children, etc.).
 - Direct towards services, shelter for victims of gender-based violence.
 - If they go abroad, seek and provide useful information depending on the case/destination.

Do not forget:

Many states have adopted laws and services that support the victims of forced marriage. Gather correct information to be able to direct/assist.

4.3. Provision of Support Services

Since there is no legislation in Romania to specifically address this type of violence, we recommend the application of existing services for victims of domestic violence in specific cases and where these measures can be applied. In this sense, we believe that it is essential to use the emergency shelter and the residential shelter for long-term situations. The existing social and legal services must be adapted so that when a case of forced marriage is identified, it can be referred to these types of services.

Other services from which the victims of forced marriages can benefit are:

- individual or group psychological counseling;
- support group in centers where there are other such cases;
- legal counseling;
- legal assistance;
- social assistance measures.

Attention!

When not all criteria are met, the school continues to monitor the case to ensure that the potential victim is attending school and her/his rights are not being violated. The General Directorate of Social Assistance and Child Protection monitors the case and maintains contact with the school.

4.4. Criminal Investigation and Prosecution Bodies

During the criminal prosecution regarding the possible criminal acts referring to forced marriage, the competent bodies gather the necessary evidence on the existence of the respective crimes, to identify the offenders and to establish their liability, to ascertain whether or not it is necessary to order the referral to the court of justice¹.

The complaints must be approached seriously, as real, and without biases. Not infrequently, the legal bodies handle these acts as an expression of tradition or practices of religious customs², justifying the decisions to classify the cases of marriages by the vulnerability level of the victim who will be left without a home or financial means. This approach certainly denotes the ethnic profiling of the victim and the crime, which represents an act of discrimination by the legal bodies side for applying a differential treatment on the grounds of ethnicity/religion in handling the case. Also, this approach is a total failure of the criminal investigation and prosecution bodies to protect the Roma minors, who should benefit from the same procedural rights as the non-Roma minors, subjecting them to long-term victimization and emotional trauma.

1 Art 200, The Criminal Procedure Code.

2 See the Judicial Inspection Report on the practice of the courts and the prosecutor's offices in the investigation and dealing with cases related to sex crimes with minor victims (2022): <https://www.inspectiajudiciara.ro/sitewebservice/Resourses/Rapoarte-de-control/RAPORT-privind-practica-instanțelor-de-judecată-și-a-parchetelor-de-pe-lângă-acestea-în-investigarea-și-soluționarea-cauzelor-privind-infracțiuni-la-viața-sexuală-cu-victime.pdf>

The rules of evidence for forced marriages should contain:

- ✓ the statements of any person who has information regarding the offense (victim, family members, school personnel, general practitioner, priest, the staff of wedding event organizing companies, neighbors, parents' work colleagues, etc.);

- ✓ the forensic medical reports and photo compositions regarding the aggressions, traces of the physical opposition manifested by the victim;

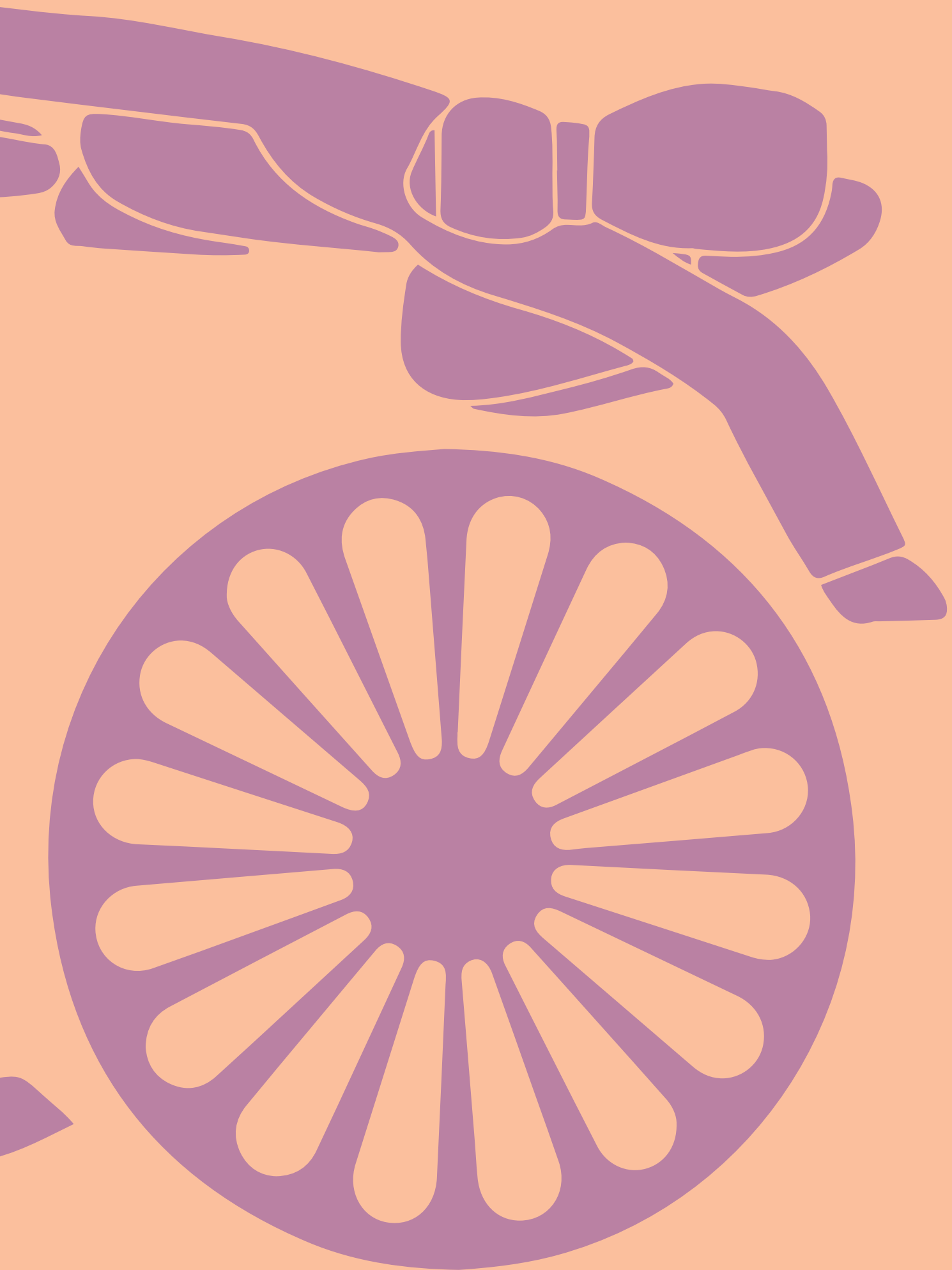
- ✓ traces of the consumed sexual intercourse;
- ✓ the virginity of the victim, if relevant;
- ✓ psychological expertise to establish if there was consent and if there is any psychological trauma;

- ✓ the birth certificate of the child resulting from the relationship (if applicable);

- ✓ goods or real estate acquired free of charge by the parents of the parties as a result of the agreement concluded between the families;

- ✓ computer searches and the psychological expertise of the defendant.





Recommendations for the legal bodies:

1. not to classify the respective cases based on the validity of the consent of minor victims, if:

- ✓ the victim(s) state(s) that they consented to the marriage and sexual relationships;
- ✓ the victim(s) is/are cohabitating with the perpetrator and gives birth to children as a result of cohabitation;
- ✓ the victim(s) has/have previous and subsequent friendship relationships (such as: phone calls or social media communications) with the perpetrator;
- ✓ the perpetrator claims that he did not know the real age of the minor or that he was not aware of the mental disability of the victim at the time of the offense;
- ✓ the victim(s) come(s) from Roma communities where underage marriages are practiced with parental approval;
- ✓ the victim(s) has/have been living with the perpetrator/s for a very long time.

2. to extend the investigation to the family members as possible instigators or accomplices who consented to or facilitated the contracting of the marriage, as well as the sexual relationships with the minor.



4.5. Protective Measures during the Criminal Investigation

In terms of protective measures, according to Law no. 272/2004, the minor victims of violence benefit from a series of special protection measures, such as:

- temporary emergency placement ordered by the General Directorate of Social Assistance and Child Protection when the minor victim is identified as a victim of violence from family or legal representatives. The measure is established by the Child Protection Commission, the parental rights being suspended until the conclusion of the criminal prosecution if the prosecutor decides to classify the case/by the Court order.

- placement ordered by the Court if the parents are deprived of the exercise of parental rights or if the punishment of parental rights denial has been applied to them.

During the criminal procedures, the minor victim of forced marriage must be considered vulnerable due to age, but also due to the dependency relationship with the perpetrators of the crime (parents/legal representatives)¹ and benefit from protective measures established for the protected witness provided in Article 126 or 127 of the Criminal Procedure Code if there is a reasonable suspicion that her/his life, physical integrity or freedom could be in danger. Therefore, the case prosecutor/Court (depending on whether the moment of identification of the suspicion of danger took place during the criminal investigation/Court proceedings) may order ex officio or at the request of the victim/lawyer the following protective measures:

- surveillance and protection of the victim's house or ensuring a temporary home;
- accompanying and providing protection during travel;
- identity data protection by granting a pseudonym with which the witness will sign her/his statement;
- the hearing of the victim without being present through audio-video transmission means with distorted voice and image when the other means are not sufficient;
- the victim's statement will not contain the real address or her/his identification data, these being recorded in a special register to which only the criminal prosecution bodies, justice of the peace, the indictment division of court judge, or the court will have access under confidentiality conditions;
- secrecy of the court session during the witness's hearing.

¹ Art. 113, paragraphs (1) and (2) of The Criminal Procedure Code.

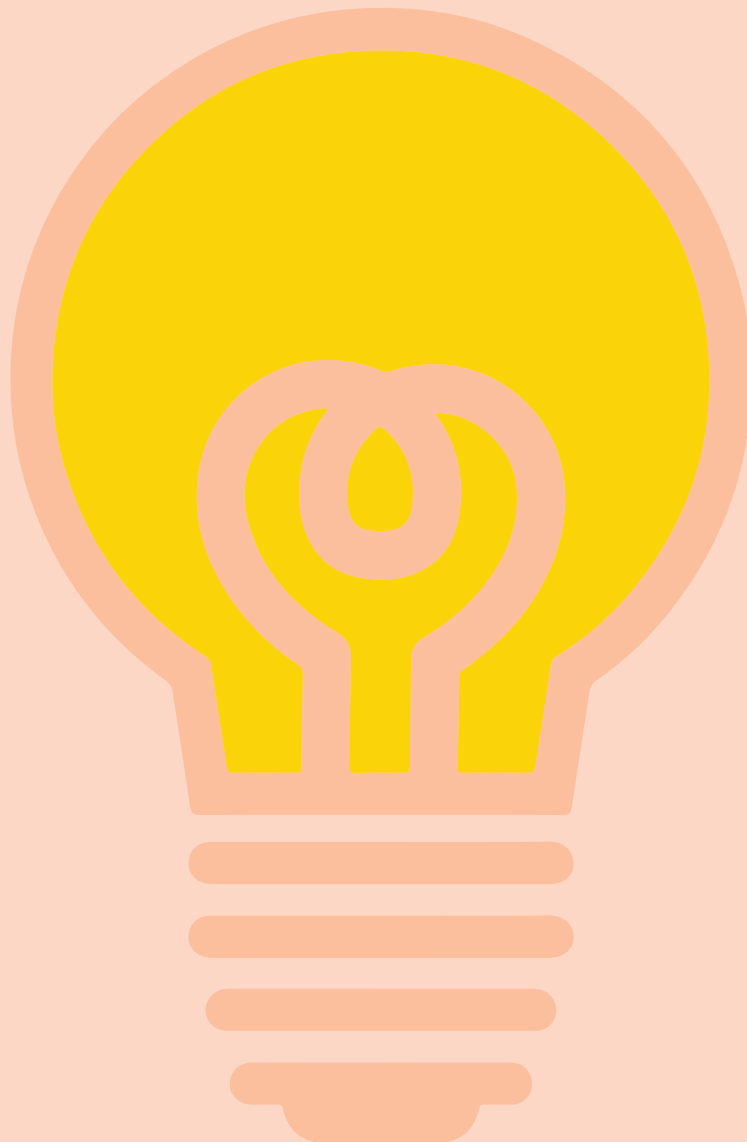
The hearing is carried out according to Article 111 (paragraph 8) of the Criminal Procedure Code.

According to the Criminal Procedure Code, we remind you some important rules for carrying out the hearing:

- The hearing of the harmed person up to the age of 14 takes place in the presence of a psychologist appointed by the judicial body. The psychologist will provide specialized counseling to the minor throughout the legal proceedings (art. 111, 8¹ Criminal Procedure Code);
- The minor's hearing will not be carried out in the presence of a parent/another family member;
- The hearing will be carried out also in the presence of the lawyer;
- If the minor cannot communicate coherently in the Romanian language, a native language interpreter must be provided;
- The recording of the hearing by technical audio-video means is mandatory in all cases. When video recording is not possible, the recording is carried out in all cases by technical audio means (art. 111 (8) Criminal Procedure Code);
- The hearing will take place on premises specifically designed or adapted for this purpose;
- The witness re-hearing and the risk of re-victimization as a result of reliving what happened must should be avoided;
- Any biases regarding the victim and the family or religious context must be avoided;
- Using a superior, aggressive behavior and focusing on the evidence and not on the victim's story must be avoided;
- Using an adequate, simple, and respectful language;
- The victim's refusal to give a statement does not mean the absence of the offense, but the emotional and psychological pressure on the victim due to the family relationship with the perpetrators, the supposed normality of this situation imposed by the family, society, public institutions, the possibility of physical coercion (threat, blackmail).

The right to information:

- Before informing, a psychologist must carry out an initial assessment to establish the level of understanding of the information that will be received or provided and of physical and emotional trauma, to establish the way of informing the minor victim and the hearing means;
- The information regarding the rights of the child as injured party within the criminal proceedings must be carried out by a single person, preferably of the same sex as the victim;
- If the complaint comes from a minor, offer information regarding the existing and concrete protective measures at the local level that could be urgently accessed.



4.6. Court of Law

Pursuant to Article 272 of the Civil Code, minors with the minimum age of 16, under exceptional conditions, can marry with the court's permission, *for good reasons, on the basis of a medical opinion, with the consent of her/his parents or, as the case may be, of the guardian and the authorization of the guardianship court in whose jurisdiction the minor is domiciled*¹.

Take note!

- ✓ In reviewing the request, the court must also hear the minors separately to identify whether the minor is coerced or has freely expressed her/his consent.
- ✓ The court must not take into consideration only the parents' consent as the expression of consent by the minor, especially since by approving the request, the emancipation of the minor is instituted through which she/he acquires the capacity for full exercise and discernment.
- ✓ The parents' consent or the support of priests for the conclusion of a marriage is not a valid reason for the authorization of the marriage.
- ✓ The court must request a social investigation report to identify the reasons brought as arguments.



¹ Art. 272, paragraph (2) of The Civil Code.

4.7. Prevention and Countermeasures

The public institutions must combat forced marriages by ensuring girls' and women's access to social and legal assistance services, education, justice, and economic opportunities.

Pursuant to Article 2 of Law 272/2004 on the rights of the child inter alia, the public authorities responsible for the child's protection are required to comply with, promote, and guarantee the rights of the child established by the Constitution and law. Therefore, the institutions empowered by law with responsibilities in preventing and combating any form of violence against children are required to intervene in the protection of children victims of forced marriages under the terms of the law in order to protect the best interests of the child.

Given the lack of specific legal regulation of the child forced marriage phenomenon, this violence having constitutive elements that fall under the scope of various crimes against the sexual life of minors (deprivation of liberty, rape, human trafficking) and also in the definition of gender-based violence, the institutional framework includes central, county, and local public institutions with attributions in:

- preventing and combating sexual violence against children and gender-based violence;
- protecting children against sexual abuse;
- ensuring support and assistance services to victims;
- developing, monitoring, and evaluating the policies on protecting the rights of all children.

The development of best practice models through international judicial cooperation contributes to the development and adoption of appropriate legislation that recognizes this type of violence, and the Romanian state must begin this process. In fact, all the information in this handbook complies with the four pillars of the Istanbul Convention: prevention, protection of victims, punishment of aggressors, and the development of corroborated policies, being a model of intersectional and intersectoral intervention that responds to the best interest of the minor victim.

Also, to combat forced marriages, careful monitoring of the existing cases is needed to observe which measures indicate short and medium-term results.

Specialized literature analyses how various punitive, legislative, community or institutional, economic, or educational approaches have failed to bring results unless approached in an intersectional manner.

Not least, combating forced marriage is achieved by starting a criminal investigation under the coordination of a trained prosecutor and bringing such cases to court.

Advice:

If you follow a marriage case with a 16-year-old minor in court, check if the judge asks the minor if she/he consents to the marriage.

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slightly aged or off-white appearance.

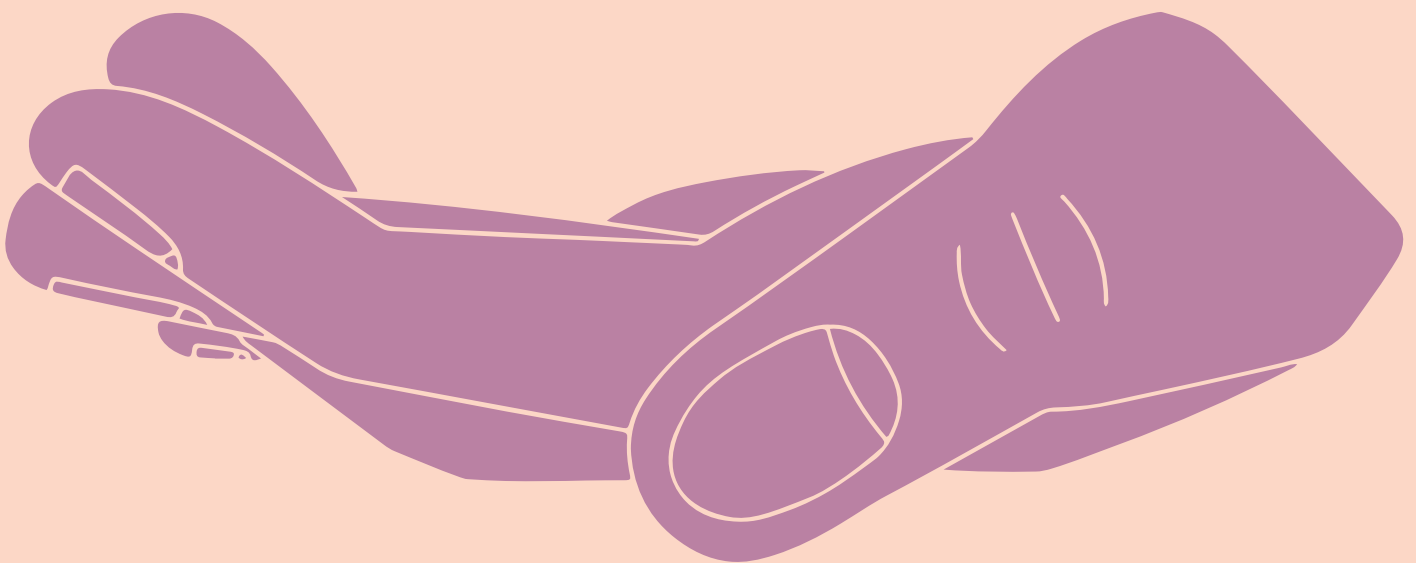
V. Prevention Measures

Many international acts, among which the Istanbul Convention, the European Union Agency for Fundamental Rights, or Resolution 5/16 of 2017 of the European Parliament, address the education field as one of the best practices methods regarding forced marriages. On the other hand, reports conducted¹ as a result of the intervention on the subject showed that only prevention through education is not enough and that approaches on several levels are needed, which is actually the successful model.

5.1. Prevention through Education

Increasing girls access to education, including sexual education, has contributed to reducing the number of forced marriages as it develops a system of empowerment, protection, and support that facilitates the level of reporting. The longer they stay in school, the more likely they are to receive the resources and skills for independent living that will prepare them for when they want to get married.

In Romania, many initiatives from the institutional system or civil society aiming at the educational system and the reduction of school dropouts, unfortunately, do not address the gender dimension, which is extremely relevant in the context of forced marriages.



¹ See 'Intervention to reduce force marriages' report, conducted by K4Dhelpdesk Services for Birmingham University (2019). Also, Generalitat de Catalunya (2014), 'Protocols for dealing with forced marriages'; or Freeman and Kleine (2013), 'College and university responses to forced marriage, London Metropolitan University.

This is why, it is important for schools:

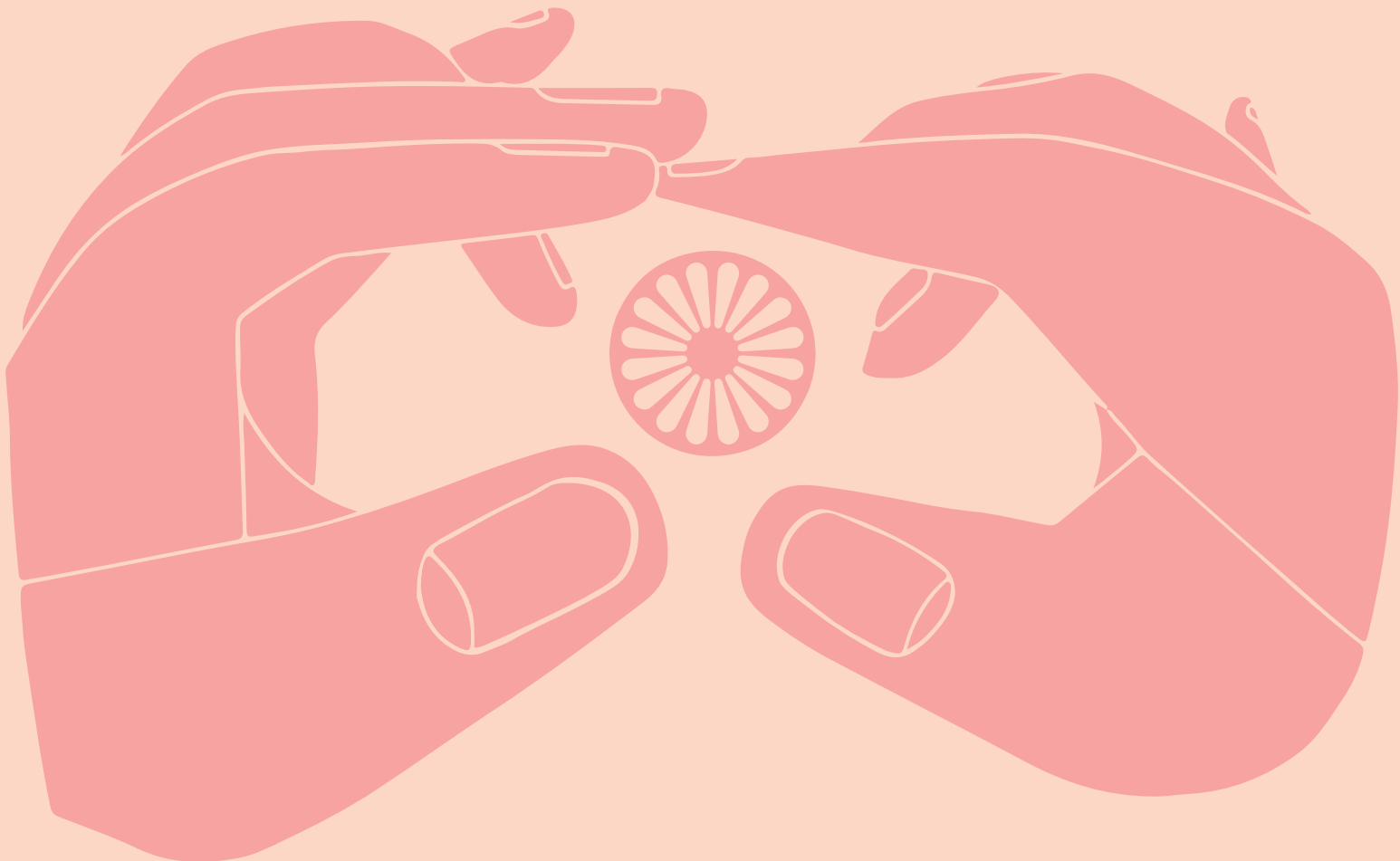
- to monitor the absence situation throughout the school year;
- to discuss with the minors who show signs of school absenteeism (see Ministry of Education order 4183/2022);
- to have a school counselor trained on this topic to offer support in different situations;
- to visit families;
- to draw up reports following visits and discussions with the school counselor for each child;
- to send notification letters to parents at the end of the semester with the school situation and absences, and also to draw attention to some consequences;
- to develop partnerships with NGOs and other relevant institutions to organize educational caravans, workshops with parents, non-formal education activities, extra-curricular activities, etc.;
- to refer possible forced marriage cases where applicable, according to the criteria (see subchapter 3.3 from the present handbook);
- to establish intervention protocols together with Child Protection, the police, and social assistance for cases related to gender-based violence.

5.2. Prevention through Empowerment

An important role in forced marriage prevention is played by non-governmental organizations through the type of community approach and the expertise held in various fields, such as the gender perspective, social, ethnic, and racial inequity, gender-based violence, etc.

We recommend the implementation of projects that aim to empower girls and women, given the unequal report in society and the way they are affected by forced marriages.

The S.O.R.A. model of Roma feminist intervention and empowerment developed by E-Romnja¹ can be applied to many groups and categories of people, complying with the principles and steps. This method can be found on the E-Romnja website or can be taught. There are, of course, other intervention models in other states, but we recommend their application with the support of the organizations that developed that method since there are different national contexts and nuances.



¹ <https://e-romnja.ro/interventie-comunitara-feminista/>

VI. International and National Legal Framework for the Prohibition of Forced Child Marriage

The existing international and European tools guarantee the principle of the child's best interest and, thus, his protection against any form of violence, including forced marriage, imposing on the signatory states the obligation to take any action for this purpose, including the adoption of the necessary legislative measures in accordance with the international norms to prevent and combat this phenomenon in a non-discriminatory framework.

The Convention on the Elimination of All Forms of Discrimination against Women¹ reinforces the principle of gender equality on women's protection regarding the conclusion of marriage and the freedom² to freely and fully express consent regarding this act, establishing the states parties' obligation to take all the necessary measures to guarantee this principle. By Recommendation No. 2, the Committee on the Elimination of Discrimination against Women specifies in Article 15, paragraph (1) that the right of a woman to choose her husband in some countries is restricted by some cultures, religions, and practices, resulting in forced marriages, therefore, *'subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law'³*. Also, for the first time, at the international level, the states parties are specifically required to outlaw children's engagements and marriages by setting the minimum age for marriage and making the registration of marriages in an official registry compulsory⁴. The Committee for the Elimination of Discrimination against Women specifies that under Article 2 of the Convention, *'States parties have the obligation to prevent, investigate, prosecute and punish (...) actions based on gender-based violence'⁵*.

1 Adopted by the General Assembly of the United Nations on October 6th, 1999. Romania ratified the Protocol through Law no. 283/2003, published in the Official Gazette of Romania, part I, no. 477 on July 4, 2003.

2 Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.

3 Art. 16, paragraphs (1) and (2) of the Convention on the Elimination of all Forms of Discrimination against Women.

4 Art. 16, paragraphs (1) and (2) of the Convention on the Elimination of all Forms of Discrimination against Women.

5 UN Committee on the Elimination of Discrimination against Women - General Recommendation no. 28 on the important obligations of the state parties on the basis of Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/2010/47/GC. 2).

The Convention on the Rights of the Child¹ provides in art. 19 that States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 19 provides the 'right of the child to freedom from all forms of violence' and reiterates that the state parties must take on special obligations to protect the child victims, such as, *'effective procedures for the establishment of social programmes to provide the necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement'*². Additionally, the document stipulates that the minor victim must be ensured compliance with all procedural guarantees, intervention, and protection measures based on a restorative approach³.

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages⁴, through Article 1, paragraph (1) and Article 2, forbids forced and child marriage, stating that *'no marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law [...] and no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses'*.

The Optional Protocol to the Convention on the Rights of the Child against the Sale of Children, juvenile prostitution and juvenile pornography⁵ regulates the situation of the sale of children with the final purpose of forced marriage, and in particular, Article 8 stipulates the necessity of protecting the child victims or survivors in question. The child's interests must constitute *'a paramount factor'* of the criminal justice system, with the states providing specialised training for those working with child victims. For the child victims, the proceedings must be adopted to take into consideration their vulnerability and special needs. The child victims must benefit from appropriate support services, be informed about the case and their rights, and on the fact that they can make statements, while protecting their identity and private life, etc.

1 Adopted by the UN General Assembly on November 20th, 1989, and ratified by Romania through Law no.18/1990 for the ratification of the Convention on the Rights of the Child (published in the Official Gazette no. 314 on June 13th, 2001).

2 Art. 19 (2).

3 Idem.

4 Ratified by Romania on December 15, 1992 through Law no. 112, published in the Official Gazette of Romania, part I, no. 330 of December 24, 1992.

5 Adopted by the General Assembly of the United Nations by Resolution 54/263 of May 25, 2000.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (known as the **Istanbul Convention**) is the first mandatory juridical document at the European level that contains provisions on the prevention, investigation, and punishment of violent acts against women, including girls. Thus, the Convention defines **forced marriage** as *forcing or 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 into a marriage*.

Resolution 1468 (2005) of the Parliamentary Assembly of the Council of Europe on **forced marriage** and child marriage condemns forced marriage and defines it as ***the union of two persons, at least one of whom has not given their full consent to the marriage***. The Resolution urges the states to refrain from recognising forced marriages and child marriages contracted abroad, to facilitate the (automatic) annulment of forced marriages and to regard any coercive sexual relations victims are subjected to within forced marriages and child marriages as rape, reinforcing the need for Member States to criminalise forced marriage as an independent criminal offence per se.

Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011, on preventing and combating trafficking in human beings and protecting its victims, and also replacing Council Framework Decision 2002/629/JHA includes in the concept of trafficking in human beings forced marriage.

Thus, the variety of international legal instruments presented led to the establishment of a broad legal framework through which the principles and standards of child protection against sexual violence, including forced marriage, were enshrined.

National Legislation

The Istanbul Convention has urged the states to criminalize forced marriage and although it was ratified by the Romanian state in 2016¹, not even to this date, Romania has not specifically regulated the criminalization of forced marriage neither for adult victims nor for minor victims. The general rule remains the lato sensu interpretation of sexual violence in the special legislation as sexual abuse and exploitation against children or as gender-based violence.

The Civil Code

According to the Romanian Civil Code, the validity of marriage is conditioned by the free consent of both spouses and the minimum age of 18, with the mention that 'for solid grounds' marriage can be legally approved from the age of 16².

In terms of 'solid grounds', Article 272 does not define it, *'which means, on the one hand, they are left to the discretion of the court, and, on the other hand, that they have a pronounced subjective and circumstantial, but not exclusive component since their assessment must also take into account the person requesting the authorization and also their factual circumstances'*³.

The lack of definition results in a non-uniform judicial practice in interpreting the solid grounds, with the exception of the birth of a child/pregnancy of a mother over the age of 16 provided by the Family Code. Correlating the above-mentioned information with the risk of violence and sexual abuse against children and child forced marriage, it is found that the existence of some legal gaps can lead to the judicial authorization of invalid marriages that endanger the safety of minors.

The Criminal Code

In criminal legislation, forced marriage includes a plurality of actions or inactions that fall within the scope of various offences under the Penal Code, such as: rape (art. 208), sexual act with a minor (art. 210), deprivation of freedom (art. 205), kidnapping (art. 456), child maltreatment (art. 197), or child trafficking (art. 211). Considering the criminal provisions that regulate the crime of rape (art. 218 of the Criminal Code, which will enter into force on January 1, 2024), the request for marriage authorisation for future spouses with an age difference of more than 5 years will no longer be accepted.

1 Law no. 30/2016 of March 17, 2016, on the ratification of the Convention of the Council of Europe regarding the prevention and combating of violence against women and domestic violence, adopted in Istanbul on May 11, 2011, published in the Official Gazette no. 224 of March 25, 2016.

2 Art. 227 of the Civil Code.

3 The High Court of Cassation and Justice, Administrative and Tax Litigation Chamber, Decision no. 4272/2022 - annulment of normative administrative acts.

Thus, *a very big age difference between spouses can be an indication, if it is corroborated with other pieces of evidence, that the conclusion of forced marriage was intended, to pursue other goals than starting a family*. Such an example is when the maximum age of the future husband/wife is not provided, nor is the existence of an age difference between spouses.

Law no. 272/2004 on the Protection and Promotion of the Rights of the child regulates the legal framework for upholding, promoting, and guaranteeing the rights of the child. Article 28, paragraph 1 provides the right of the child to respect for their personality and individuality, and also the right to not be subjected to physical punishment or other humiliating or degrading treatments. Under Article 85, paragraph 1, the child has the right to protection against any form of violence, abuse, maltreatment, or neglect. Under paragraph 2 of the same article, any natural or legal person, and also the child, may refer the authorities empowered by law to take appropriate measures to protect them against any form of violence, including sexual violence.

By **law No. 202/2002 on Equality of Opportunity and Treatment for Women and Men**, republished, with the subsequent amendments and additions, in Article 4, letter d), forced marriage is defined as gender-based violence, specifically: *'gender-based violence is defined as the act of violence against a woman or, as the case may be, a man, motivated by gender identity. Gender-based violence against women is violence that affects women in a disproportionate manner. Gender violence includes, but is not limited to, the following offences: domestic violence, sexual violence, genital mutilation of women, **forced marriage**, forced abortion and forced sterilisation, sexual harassment, human trafficking, and forced prostitution.'*

VII. Intervention Patterns Applied by European States Regarding Forced Marriages

Romania, next to other 6 member states of the European Union (Czech Republic, Finland, Hungary, Latvia, Lithuania, and Poland), does not criminalise forced marriage or child marriage, in comparison with countries such as Austria, Belgium, Bulgaria, Croatia, Cyprus, France, Germany, Ireland, Italy, Liechtenstein, Luxemburg, Malta, Norway, Portugal, Slovenia, Spain, Sweden, United Kingdom which specifically regulates forced marriage and its sanctioning through criminal provisions¹.

¹ European Commission, Criminalization of gender-based violence against women in European states, including ICT-facilitated violence, Sara De Vido and Lorena Sosa, 2021, page 115.

Member States of the European Union	Specific provisions on forced marriages	Specific provision on child marriages	Forced marriages as an aggravating circumstance or as one of the purposes of human trafficking	Forced marriage is addressed only in civil law or by general criminal provisions	The 'luring' factor in forced marriages
Austria	x				x
Belgia	x				x
Bulgaria	x				x
Croatia	x		x		x
Cipru	x				x
Cehia				x	
Danemarca			x		
Estonia			x		
Finlanda				x	
Franta	x				x
Germania	x				x
Grecia			x		
Ungaria				x	
Islanda			x		
Irlanda	x				x
Italia	x				x
Latvia				x	
Liechtenstein	x				x
Lituania				x	
Luxembourg	x				x
Malta	x				x
Olanda			x		
Norvegia	x				x
Polonia				x	
Portugalia	x				x
România				x	
Slovacia			x		x
Slovenia	x				x
Spania	x		x		x
Suedia	x	x			x
Marea Britanie	x				x

• Source: European Commission, 2021

Sweden

Sweden is the only country in the EU that specifically criminalizes child marriage. Since 2014, following the ratification of the Istanbul Convention, Sweden has adopted new criminal and civil rights provisions consolidating the protection against forced marriage and child marriage. Regarding forced marriages, the Criminal Code provides that if a person, *following a direct threat or by exploitation of another person's vulnerable situation, induces another person to enter into a marriage that is valid in the state where it is entered into/ in the state under whose laws it is entered into is guilty of coercion to marry and is sentenced to imprisonment for at most four years*¹.

Also, the amended Criminal Code stipulates a prison sentence of up to 4 years if a person induces another person to enter into a relationship similar to marriage or *if it is entered into under rules that apply within a group where the parties are regarded as spouses and are deemed to have rights and obligations in relation to one another*. The punishment applies both to the major spouse, even if they had no intention to marry a minor or had neglected to find out the age of the minor, but also to the persons who induced or allowed the minor to enter into such marriage.

Since then, it is no longer possible to grant marriage dispensation to children. At the same time, the international norms of private law on recognising foreign marriage have been toughened. Criminal provisions were introduced in criminal law on coercion to marry and enticing a person to travel abroad for the purpose of forced marriage. The criminal provisions cover both legally valid and informal marriages, regardless of whether they are concluded in Sweden or abroad.

On January 1st, 2019, by amending the Act on *Certain International Relationships Regarding Marriage and Guardianship*, the norms have been further reinforced in private international law. The 18-year-old requirement was introduced not only as the minimum marriage age for concluding a marriage on the state's territory, that is, as a kind of internationally mandatory rule but also as a condition for the recognition of foreign marriage. The prohibition applies regardless of the parties' ties to Sweden at the time of the marriage or their age at the time the recognition of the marriage is examined by a government agency.

The new Swedish legislation constitutes, perhaps, an extreme example of combating the phenomenon of child marriage by invalidating the forced marriage that could be legal in the respective countries, completely nullifying the legal effects of marriage, such as maintenance or property rights.

1 Criminal Code of Sweden, Chapter 4, Section 4c § BRB, pages 39-40, available on <https://www.government.se/contentassets/7a2dcae0787e465e9a2431554b5eab03/the-swedish-criminal-code.pdf>

2 See prof. Maarit Jänterä-Jareborg, Uppsala University, Sweden on New rules on non-recognition of underage marriages, <http://conflictoflaws.net/2019/sweden-new-rules-on-non-recognition-of-underage-marriages/>

Great Britain

The Criminal Code criminalises marriage as being forced when one or both parties do not consent but are forced against their will. This includes someone who does not have the mental capacity to consent to marriage. Forced marriages are somewhat different from "arranged marriages," where parents and relatives may help select or choose marriage partners, although the final decision to enter into the marriage rests with the person(s) entering into the marriage contract.

Pursuant to the Forced Marriage (Civil Protection) Act 2007 and the Family Act 1996 to criminalise forced marriage, **Forced Marriage Protection Orders (FMPOs)** were established as a civil protection measure. They are issued at the request of victims of forced marriage in family courts to protect both actual victims and those at risk of forced marriage.

To increase the reporting and deterrence of forced marriages, in 2014, the UK state amended the legislation by introducing the additional offence of forced marriage, which results in perpetrators being sentenced to up to 7 years for forcing a person into marriage. The offence of not complying with FMPOs is punishable by up to 5 years in prison.

Another amendment is that the burden of requesting such an order rests with the victim or a person close to them as an additional measure of protection for victims who are in difficulty or unable to submit a request or for foreign victims who have entered the country but do not know the legislation.

Additionally, as FMPO violation and forced marriage constitute separate criminal offences, the police no longer need to seek permission from the civil court to arrest perpetrators for contempt of court – as separate offences, the police can investigate a complaint and make arrests.

Victims who have experienced violations of the FMPOs have double options – they can choose to pursue the violations in either civil or criminal jurisdiction (but not both). This will be an important help for victims to avoid the repercussions of initiating criminal proceedings against family members. Alternatively, however, the strength of a criminal sanction may be what is needed in individual cases if forced marriage is to be eliminated and the victim to be adequately protected. Also, victims cannot be forced to become witnesses during the criminal prosecution. This gives victims more confidence in choosing a criminal rather than a civil course.

Despite these changes to increase reporting and victim protection, the English legislature has not resolved the dilemma of how to terminate a forced marriage that avoids re-victimisation. Explicitly, the English doctrine states two rules of termination, namely by divorce or annulment. Both methods invoke the fact that in order to start these procedures, the victim must recognise that the marriage is valid¹.

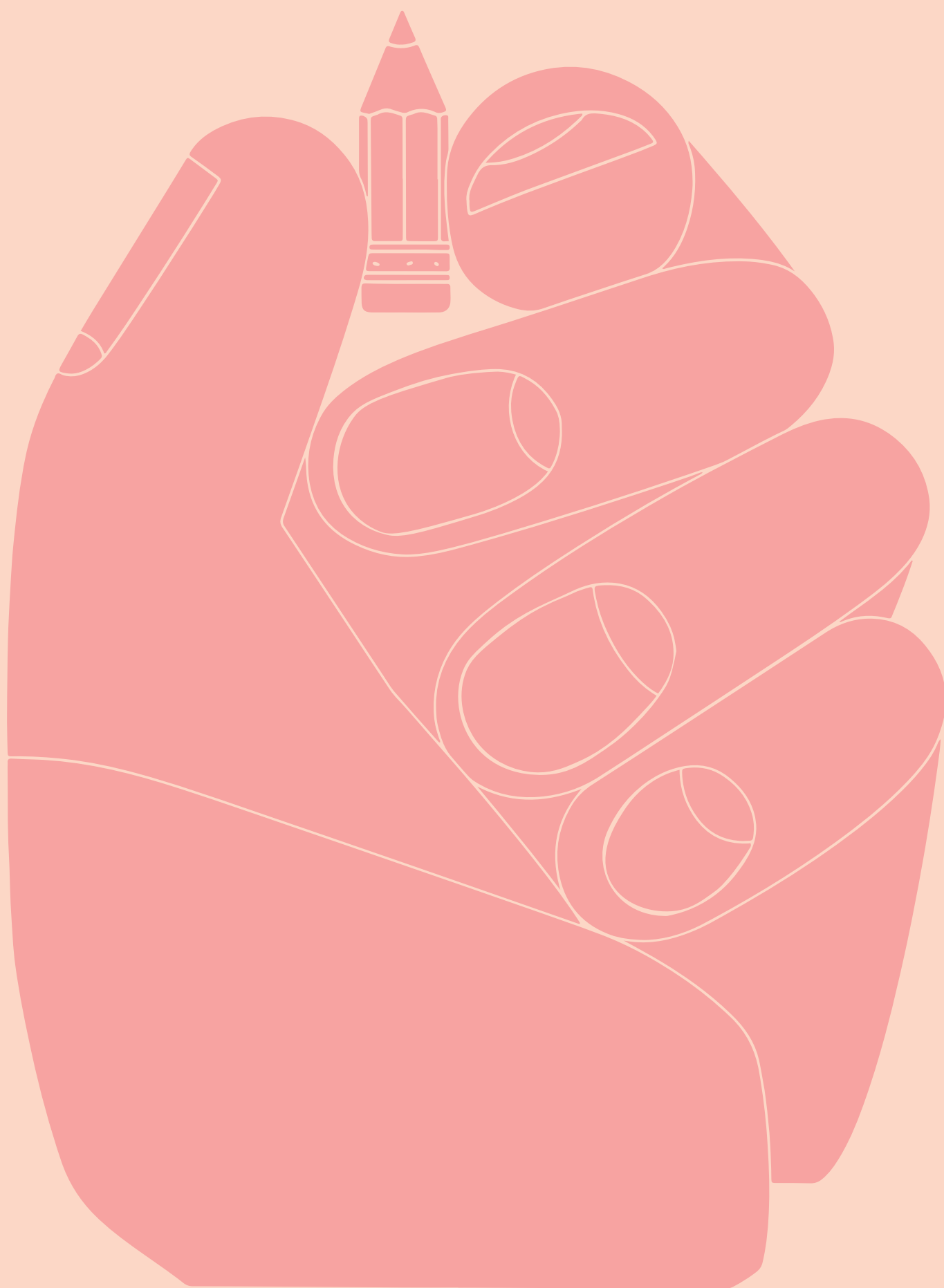
¹ Equality Now - a law project that gives girls the right to request the annulment of a marriage in civil files on the ground that it has been concluded by force, without consent. In the United Kingdom, for example, pressure was applied to eliminate or extend the time period from the moment of marriage. This measure was necessary to request and obtain the retroactive annulment of a marriage in court, in situations in which, for example, a woman could invoke that she was much too young to decide on a marriage concluded at a very young age.

VIII. General Recommendations:

Forced marriage, like child marriage or underage marriage, is a form of gender violence and needs to be introduced in the working method of public institutions dealing with victims. Given that there are no specialised services and sufficient legislation, it is necessary to address and instrument cases and classify them according to the existing regulations. Throughout the handbook, you will find specific recommendations and advice to help in different cases and different stages of intervention.

At the end of this handbook, we mention a series of general recommendations to be implemented in future initiatives by both public institutions and other relevant actors.

- Adopting legal measures and methodologies to define, handle, and intervene in cases of forced/child/underage marriages as a type of gender-based violence;
- Making amendments of strategies on gender-based violence and children's rights by introducing specific measures to prevent child marriage, accompanied by measurable indicators and allocated budget;
- Data collection by The National Authority for the Protection of Children's Rights and Adoption on the services offered by the General Directorate of Social Assistance and Child Protection segregated by age, gender, urban or rural background, data centralisation and annual reporting;
- Inter-institutional collaboration for the development of programs/campaigns to raise awareness of forced marriage in vulnerable communities, to raise awareness and train professionals on their duties and roles in preventing and combating the phenomenon;
- The elaboration of a comprehensive intervention handbook for the competent institutions;
- The development, implementation, monitoring, and evaluation of training programs for school staff and school inspectorates in identifying, reporting, and handling cases of forced child marriages;
- The development, implementation, monitoring, and assessment of awareness and informational programs for children and parents on the effects of forced marriage on children's personal, psychological, and educational development, but also the impact, including criminal, on families;
- The development of a school curriculum adapted to prevent school dropout and improve the educational performance of students at risk of underage marriage;
- The development, implementation, monitoring, and evaluation of training programs for personnel within the General Directorate of Social Assistance and Child Protection in planning and implementing the intervention regarding child victims of forced marriage;
- The approach of forced marriages topic by the Inter-Ministerial Committee for the Prevention and Combating of school dropouts.



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