

Chapter 1: Victims of early and forced marriages

The purpose of this chapter isn't to deal exhaustively with the issue of forced marriages in connection (or not) with human trafficking. Instead, it aims to provide an introduction to the problem, specifically concerning minors, based on several cases that came to Myria's attention.

1. The concept of forced marriage

The aim of European directive 2011/36 on human trafficking¹ is to tackle recent developments in trafficking by including forms of exploitation such as forced begging and the exploitation of criminal activities. In this respect, preamble 11 of the directive specifies that the definition also includes other behaviours “such as illegal adoption or forced marriage, insofar as they fulfil the constitutive elements of trafficking in human beings”.

The Belgian legislator, on the other hand, decided not to explicitly include illegal adoption or forced marriages in the definition of trafficking and, more particularly, as a form of exploitation². However, “control” was added among the material elements that constitute this offence³. The addition of this

term provides a clearer definition, among other things, of the control exerted over a person within the framework of a forced marriage, with a view to their exploitation⁴.

Forced, arranged, sham, early, customary, white, or grey marriages: these terms are frequently used and sometimes confused. What is the current situation regarding these terms⁵?

Also note that these concepts are a particular source of debate when they concern couples where one or both partners don't have Belgian nationality, given that family migration is one of the only legal migration channels⁶.

1° for the purposes of the exploitation of prostitution or other forms of sexual exploitation;

2° for the purposes of the exploitation of begging;

3° for the purposes of work or services, in conditions contrary to human dignity;

4° for the purposes of organ harvesting in violation of the Law of 13 June 1986 on the harvesting and transplantation of organs, or human biological material in violation of the Law of 19 December 2008 relating to the collection and use of human biological material intended for human medical applications or for the purposes of scientific research;

5° or in order to have this person commit a crime or offence against their will.

Except for the case referred to in point 5, the consent of the person referred to in paragraph 1 for the envisaged or actual exploitation is irrelevant”.

⁴ Report compiled on behalf of the Justice Committee of the Chamber, particularly concerning the draft law aimed at amending Article 433quinquies of the Criminal Code in order to extend the definition of human trafficking to sexual exploitation, *Parl. doc.*, Chamber, Doc 53-2607/004, p. 8; Amendment to the draft law aimed at amending Article 433quinquies of the Criminal Code in order to clarify and extend the definition of human trafficking to sexual exploitation, *Parl. doc.*, Chamber, Doc 53-2607/002, p. 4.

⁵ On this subject, see: M. MASKENS, “L'amour et ses frontières: régulations étatiques et migrations de mariage (Belgique, France, Suisse et Italie)”, in Dossier - Mariages et migrations: l'amour et ses frontières (coordinated by Maité Maskens), *Migrations Société*, Vol XXV, no. 150, Nov.-Dec. 2013.

⁶ On the nature and extent of migratory flows associated with the right to live in a family, see *Migration in figures and rights 2015*, Chapter 5, available on www.myria.be.

¹ European Parliament and Council Directive 2011/36/EU of 5 April 2011 on the prevention and fight against human trafficking as well as the protection of victims, replacing the Council's 2002/629/JAI framework decision, *O. J.*, L101 of 15 April 2011.

² Note that a draft law was however submitted to this effect: see draft law proposition aimed at completing Article 433quinquies, §1 of the Criminal Code, with a view to establishing the special intent of forced marriage in terms of human trafficking, *Parl. Doc.*, Senate, session 2011-2012, Doc.5-1381/1.

³ See the Law of 29 April 2013 aimed at amending Article 433quinquies of the Criminal Code with a view to clarifying and extending the definition of human trafficking, *Belgian Official Gazette*, 23 July 2013. This article defines trafficking as follows: “The crime of human trafficking is constituted by the recruitment, transportation, transfer, harbouring or reception of persons, taking or transferring the control exerted over those persons:

Forced marriage

A marriage is generally considered as forced when one of the two persons involved in the union hasn't given their free and full consent to it. This type of marriage is entered into as a result of physical or psychological pressure, the latter being far more subtle and difficult to detect⁷. As underlined by the Institute for the Equality of Women and Men, this problem should be approached with caution owing to the danger of stigmatisation associated with it: the practice of forced marriage can be explained through cultural data rather than specific racial, ethnic or religious characteristics⁸.

Note that forced marriage isn't defined the same way in all countries worldwide: it is indeed difficult to judge all the cases of forced marriage, associated with a certain unwillingness within families, when there is no physical violence⁹. While forced marriage is characterised by a lack of consent and a form of violence, the way this violence is defined can vary (manipulation, deception, emotional blackmail, coercive means, psychological pressure, etc.)¹⁰.

In Belgium, forced marriages are the subject of specific provisions, both on a civil and criminal level¹¹. The Civil Code gives registrars the right to refuse to conduct a marriage if they are faced with a forced marriage¹². Article 146^{ter} of the Civil Code states that "there is no marriage either if the latter is entered into without the free consent of both spouses or if the consent of at least one of the spouses was given subject to violence or threats". The forced marriage is invalidated. The spouses, any interested parties or the public prosecutor may submit a request for the marriage's annulment¹³. Similar provisions exist for forced legal cohabitation¹⁴.

Article 391^{sexies} of the Criminal Code punishes the behaviour of anyone using violence or threats to force or attempt to force someone to enter into a marriage¹⁵. Article 391^{septies} equally punishes forced legal cohabitation. The judge who hands down a conviction on the basis of these articles can also annul the marriage or legal cohabitation, upon the request of the senior crown prosecutor or any interested party¹⁶.

In Belgian law, it is therefore the lack of free and informed consent that determines whether or not a marriage is forced.

⁷ See the Institute for the Equality of Women and Men website: http://igvm-iefh.belgium.be/fr/domaines_action/violence/gedwongen_huwelijken/

⁸ *Ibid.*

⁹ E. RUDE-ANTOINE, *Les mariages forcés dans les États membres du Conseil de l'Europe: législations comparées et actions politiques*, Directorate General of Human Rights, Strasbourg, 2005, p. 21. The study is available at the following link: [www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG\(2005\)1_fr.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG(2005)1_fr.pdf)

¹⁰ N. BENSALD and A. REA, *Étude relative aux mariages forcés en région de Bruxelles-capitale*, Group for Research on Ethnic relations, Migrations & Equality (ULB), November 2012, p. 13. The study is available at the following link: <http://germe.ulb.ac.be/uploads/pdf/articles%20online/rapportMF2013NawalB.pdf>

¹¹ These provisions were introduced by the Law of 25 April 2007 inserting Article 391^{sexies} into the Criminal Code and amending certain provisions of the Civil Code with a view to incriminating and extending the means to annul forced marriages, *Belgian Official Gazette*, 15 June 2006. These provisions were further amended by the Law of 2 June 2013 amending the Civil Code, the Law of 31 December 1851 on consulates and consular jurisdiction, the Criminal Code, the Judicial Code and the Law of 15 December 1980 on access to the territory, stay, establishment and return of foreigners, with a view to combating sham marriages and sham legal cohabitation, *Belgian Official Gazette*, 23 September 2013.

¹² Article 167, paragraph 1 of the Civil Code.

¹³ Article 184, paragraph 1 of the Civil Code.

¹⁴ Articles 1476 *bis* to 1476^{quinquies} of the Civil Code.

¹⁵ Sentencing includes three months to five years in prison and a fine of EUR 250 to 5,000. Attempt is subject to a two-month to three-year prison sentence and a fine of EUR 125 to 2,500.

¹⁶ Article 391 ^{octies} of the Criminal Code.

Arranged marriage

The difference between an arranged marriage and a forced marriage is that in an arranged marriage, the families of both spouses play a leading role in the arrangement of the marriage but the choice to marry or not lies ultimately with the future spouses¹⁷. Above all, it is a strategic and/or economic tool which serves the family¹⁸.

While it may seem easy to establish the theoretical difference between a forced marriage and an arranged marriage, this is not the case in practice. In reality, there are many variations in the definition of the concept¹⁹: it isn't always easy to draw the line between consent and non-consent²⁰. Different degrees of coercion can exist in an arranged marriage²¹.

Finally, it is those concerned by this type of marriage who are best placed to define whether it is question of an arranged marriage with consent, or arranged without consent, which would put it in the same category as a forced marriage²². For workers in the field,

¹⁷ Definition by A. GARCIA in N. BENSALD and A. REA, *op. cit.*, p. 7.

¹⁸ Institute for the Equality of Women and Men, "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, p. 7. The handbook is available at: http://igvm-iefh.belgium.be/fr/binaries/84%20-%20Mariage%20forc%C3%A9.%20Guide%20%C3%A0%20l'usage%20des%20professionnelles_tcm337-268254.pdf

¹⁹ N. BENSALD and A. REA, *op. cit.*, p. 7 and pp. 16-21.

²⁰ N. BENSALD and A. REA, *op. cit.*, p. 18. These authors also point out (*ibid.*) that some authors consider arranged marriage as an act of violence, just like forced marriage because of the underlying submissive relations. Furthermore, they highlight the fact that on the contrary, for other authors, arranged marriage isn't an act of violence but simply the reflection of a tradition and that nothing proves that young people are against it.

²¹ The handbook on forced marriage for professional purposes, *op. cit.*, p. 10 points out that "there are some situations of 'highly' arranged marriages where the future spouses are subject to a diffuse form of pressure from the family and/or community and ultimately give their consent, more or less reluctantly, without considering that they have been forced".

²² N. BENSALD and A. REA, *op. cit.*, p. 20. See also the interesting study by S. ZEMNI, N. PEENE, M. CASIER, *Étude des facteurs limitant la liberté de choix d'un partenaire dans les groupes de population d'origine*

this means using the victim's experience as a basis, and establishing a grading system in terms of level of pressure and agreement²³.

Customary marriage

Some customary or religious marriages celebrated abroad may be recognised in Belgium if they are valid according to the law in the country where they took place and if they are equivalent to a civil marriage²⁴. The criminalisation of forced marriage (Article 391*sexies* of the Criminal Code) is aimed at marriage legally recognised in Belgium. However, according to certain authors, customary marriage celebrated in Belgium in contradiction with the Civil Code is also a form of marriage protected by Article 391*sexies* of the Criminal Code²⁵. It could therefore be considered as forced marriage.

étrangère en Belgique, Study report, C.I.E, University of Ghent, http://igvm-iefh.belgium.be/fr/binaries/Rapport%20Choix%20de%20partenaire%20FR_tcm337-152789.pdf. This study also establishes the possible nuances between arranged and forced marriage. These authors organised a series of group sessions where the participants were asked to describe their idea of arranged marriage and forced marriage. According to the participants, pressure should enter into the definition of forced marriage. This pressure can be direct and is assimilated with threats; it can also be indirect (pressure from the community, for instance). According to the participants, it is free will that determines whether it is a forced or arranged marriage (*ibid.*, pp. 75-78).

²³ E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", speech within the framework of the study day: "Suggestions en vue de l'approche des mariages précoces et forcés en Belgique et dans les pays partenaires de la Belgique", organised by the University of Ghent's International Centre for Reproductive Health and Plan Belgique, in collaboration with the Institute for the Equality of Women and Men, 24 March 2015.

²⁴ Ch.-E. CLESSE, *La traite des êtres humains, Droit belge éclairé des législations française, luxembourgeoise et suisse*, Brussels, Larcier, 2013, p. 504.

²⁵ Ch.-E. CLESSE, *op. cit.*, p.504 quoting the stance of M.-L. Cesoni, "Le mariage forcé", in *Les infractions, vol.3: les infractions contre l'ordre des familles, la moralité publique et les mineurs*, Brussels, Larcier, 2011, p. 358.

Child marriage, early marriage

The United Nations Convention on the Rights of the Child defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”²⁶. This Convention doesn’t explicitly mention child marriage. However, the United Nations Committee on the Rights of the Child, responsible for monitoring the Convention’s implementation, declared that a “minimum age for marriage should be eighteen years for men and women” and that “the betrothal and marriage of a child shall have no legal effect (...)”²⁷. We should also mention Article 16, 2 of the Convention on the elimination of all forms of discrimination regarding women, which stipulates that “the betrothal and marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory”²⁸.

Plan Belgique²⁹ defines child marriage as being a marriage where at least one of the partners hasn’t reached the age of 18 years old. In the broad sense, the term “marriage” includes cohabitation, betrothal or conjugal union as recognised by civil law, religion or customary rites³⁰. Plan Belgique also underlines the existing discussions regarding the terms to be

used to describe the issue of marriage of persons under the age of 18. According to the existing laws in certain countries or certain regions, or according to certain customs, a child can already be an adult before the age of 18. This is why many associations prefer to use the term early and forced marriage rather than “child marriage”. As for the United Nations, it uses the term “child, early and forced marriage”³¹. In this analysis, we shall use the terms early marriage and child marriage indiscriminately to refer to all forms of union where one of the partners is someone under the age 18.

In many countries, legislation forbids early marriages. However, some laws expressly authorise the marriage of minors, providing parental authorisation is given or a dispensation is granted by an authority. In Belgium, marriage is forbidden under the age of 18, unless the family court authorises it for serious and justified reasons³². In principle, the minor must obtain the consent of his or her parents³³. In some parts of the world, there are also certain rules and traditional, customary and/or religious practices. In this case, marriages are celebrated according to customary rites and aren’t always registered³⁴.

²⁶ Article 1 of the Convention on the rights of the child.

²⁷ General Recommendation of the Committee, General Recommendation No. 21 (13th session, 1994 on equality in marriage and family relations).

²⁸ For the other international and regional treaties relating to issues of marriage, which mention the spouses’ free and full consent, see: B. FONTENEAU and H. HUYSE, *Les mariages précoces et forcés: que fait la coopération au développement belge? La question du mariage forcé d’enfants dans la perspective de la coopération belge*, Plan, KULeuven, Hva, 2014, p. 5. The study is available at the following link: http://www.planbelgique.be/sites/default/files/user_uploads/plan_hiva_cfmreport_fr_web_0.pdf

²⁹ Plan Belgique is an independent non-governmental organisation, and a member of the International Coalition Plan, active in 69 countries 50 of which are the poorest in Africa, Asia and Latin America. It acts in favour of the most vulnerable children in the south and their community.

³⁰ B. FONTENEAU and H. HUYSE, *op. cit.*, p. 5.

³¹ See resolution 24/23 of the Human Rights Council adopted in September 2013 on this issue and more recently, the resolution adopted by the same council in July 2015 (see the website: <http://www.girlsnotbrides.org/human-rights-council-adopts-resolution-to-end-child-early-and-forced-marriage>). See also Joint General Recommendation/General Observation No. 31 of the Committee on the Elimination of All Forms of Discrimination against Women and no. 18 of the Committee on the Rights of the Child on Harmful Practices adopted on 4 November 2014, available at: <http://www.intact-association.org/images/stories/newsletters/3recommendation-cedaw-crc-n31.pdf>.

³² Articles 144 and 145 of the Civil Code. A serious reason may be the future bride’s pregnancy, for instance.

³³ Article 148 of the Civil Code. This consent is recorded by the family court. If the father and mother refuse to give their consent, the court can authorise the marriage if it considers the refusal to be abusive.

³⁴ E. RUDE-ANTOINE, *op. cit.*, pp. 18-19.

Marriage before the age of 18, or even very early on, raises several questions: are the newlyweds capable of making an informed decision concerning their partner? Are they aware of the implications of marriage? As of what age can a child be considered as capable of consenting to marriage? Consequently, many countries compare these child marriages or early marriages to forced marriage. Indeed, in this type of marriage, at least one of the spouses hasn't reached physical, psychological or emotional maturity and is therefore not in a position to express their free consent to marry³⁵.

While child marriages take place worldwide and are common practice in certain parts of Africa and South Asia³⁶, they are also still in practice in certain parts of Central and Eastern Europe, especially among the Roma and in the former Yugoslav Republic of Macedonia³⁷. Some Roma groups have preserved their customary marriage practices. These early marriages are especially seen from an educational point of view: parents know from experience that as of a certain age, young people are more difficult to control. Moreover, they fear that the girls will lose their virginity before they get married. These marriages are considered as a positive step that increases the community's solidarity and respect. The family's and the father's honour is directly linked to the future bride's virginity³⁸. Once married, the young girl goes to live with her in-laws. She has to carry out the tasks her mother-in-law expects her to do. This may or may not lead to her dropping out of school, thus infringing the right to

education and the possibility of working in the future³⁹.

In certain traditional Roma families, a dowry system⁴⁰ still exists. In this case, the young girl's characteristics (virginity, docility, abilities, etc.) will determine the "price of the bride". If it turns out that the future bride is no longer a virgin, the groom's family can demand compensation⁴¹. Later on in this chapter (points 3.2 and 3.3), we shall see how this dowry system is taken advantage of by certain criminal groups for the purpose of exploitation. In this case, we are talking about the sale of children⁴².

Note that the dowry system is no longer customary among many Roma groups living in Brussels. However, the fathers of the brides will offer the young couple a financial contribution during the marriage ceremony, which serves as a starting capital. In addition, expectations regarding the daughter-in-law have also evolved: more and more parents

³⁵ *Ibid.*

³⁶ The highest percentage of child marriages (more than 30 %) occurs in West Africa and Sub-Saharan Africa. More than 50 % of girls forced into marriage live in South Asia (B. FONTENEAU and H. HUYSE, *op. cit.*, p. 5).

³⁷ E. RUDE-ANTOINE, *op. cit.*, pp. 23-24.

³⁸ K. GEURTS, *Roma in beweging, Diverse groepen en evoluties in Brussel, Handvaten voor onderwijs en hulpverlening* (Les Roms en action, Différents groupes et évolutions à Bruxelles, Suggestions pour l'enseignement et l'aide), Regionaal Integratiecentrum Foyer Brussel vzw, 2014, p. 257.

³⁹ See Council of Europe, *Human rights of Roma and Travellers in Europe*, 2012, not. p. 131. The document is available at the following link: http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf

⁴⁰ The bride is symbolically exchanged for goods or money. In the majority of cases, a sum of money is given to the bride's parents. This custom has a social utility in poor families: it allows them to organise a decent wedding for their daughter and symbolically compensates for the future absence of a member of the family. (See: O. Peyroux, *Délinquants et victimes, la traite des enfants d'Europe de l'Est en France*, Paris, 2013, p. 115).

⁴¹ K. GEURTS, *op. cit.*, p. 259.

⁴² See Article 2 a) and Article 3 1 a) i) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Article 2 a) of the Protocol stipulates: "The sale of children is intended to cover any transaction in which remuneration or other consideration is given and received". According to Article 3, 1 of the Protocol, the States Parties have precise obligations concerning child marriage or forced marriage revolving particularly around the payment of a dowry or the price of the fiancée. On this subject, see point 24 of the Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices adopted on 4 November 2014.

consider that the girls must go to school. The most important concern is that they remain a virgin until they are married⁴³.

Sham marriage

A sham marriage is a marriage where at least one of the two partners has no intention of leading a married life⁴⁴. In Belgium, this concept is more related to migration⁴⁵. Article 146 *bis* of the Civil Code states that “there is no marriage when, despite formal consent being given for the latter, it is revealed through a combination of circumstances that the intention of at least one of the spouses is clearly not the creation of a long-lasting relationship as a couple, but rather (the purpose is merely) to obtain a benefit in terms of residential status, linked to the status of spouse”.

Article 79*bis* of the law on foreigners⁴⁶ criminalises both the behaviour of the person concluding the sham marriage⁴⁷ and the person receiving a sum of money as payment for the conclusion of such a marriage⁴⁸. A person who uses violence or threats towards another person to force them to conclude such a marriage can also be prosecuted⁴⁹. Article 79*ter* of the same law similarly punishes sham legal cohabitation.

In several reports, Myria mentioned the use of sham marriages or legal cohabitation as the *modus operandi* for human trafficking⁵⁰. Furthermore, Myria has dedicated many analyses to the fight against sham marriages and sham legal cohabitation and its impact on the right of the foreigners concerned to live in a family⁵¹.

Grey marriage

There is also the concept of grey marriage, where “one of the two persons is sincere and acting in good faith and is the victim of their partner’s manipulation whose goal is merely to obtain the right to reside in Belgium”⁵². This can be considered a fraudulent marriage, also referred to in Article 146*bis* of the Civil Code⁵³. It is in fact only one of the spouses who has the intention of creating a lasting relationship together.

⁴³ K. GEURTS, *op. cit.*, p. 259.

⁴⁴ N. BENSALD and A. REA, *op. cit.*, p. 21.

⁴⁵ For a detailed overview of the procedures and rights of the persons concerned, see in particular, the Marriage and Legal Cohabitation in Belgium brochure, available at www.myria.be.

⁴⁶ Law of 15 December 1980 on access to the territory, stay, establishment and return of foreigners.

⁴⁷ The sentences provided for in this case are from one month to three years in prison and a fine ranging from EUR 50 to EUR 500.

⁴⁸ The sentences provided for in this case are from two months to four years in prison and a fine ranging from EUR 100 to EUR 2,500.

⁴⁹ In this case, the sentences provided for are from three months to five years in prison and a fine ranging from EUR 250 to EUR 5,000.

⁵⁰ See this report, part 2, Chapter 2, point 1.1.2. and Chapter 4, point 1.1. (sham marriage); Trafficking in and Smuggling of Human Beings, Annual Report 2011, *The Money that Matters*, pp. 89, 93-96 and 101-105 ; Human Trafficking, Annual Report 2013, *Building bridges*, pp. 13, 17, 23, 25 and 107.

⁵¹ For a critical analysis of the means of fighting simulated marriages, see the *Migration Annual Report 2013*, pp. 106 to 110 as well as the *Migration Annual Report 2007*, pp. 124 to 129, on the unavailability of reliable data on simulated marriages see *Migration Annual Report 2012*, p. 86. Also see: B. LANGHENDRIES, “Les bébés papiers”: Derrière le concept choc, un nouveau risque de discrimination des familles en migration, available at <http://www.adde.be/publications/newsletter/newsletters-2013/92-novembre-2013/edito-newsletter-adde-92-novembre-2013>.

⁵² N. BENSALD and A. REA, *op. cit.*, p. 21.

⁵³ *Ibid.*, p. 25.

2. The victims of forced marriage in Belgium

2.1. Extent of the phenomenon

Forced marriages are the subject of a dark figure owing to the very low number of cases reported⁵⁴. The victims only very rarely report their case to the authorities or even to associations for various reasons (fear, shame, ambivalence, loyalty towards the family, etc.). The official figures are therefore very low. Hence, in Belgium, only 56 complaints relating to a forced marriage have been registered by the police since 2010⁵⁵. In Brussels, the declared number of forced marriages in the strict sense is marginal⁵⁶. There were no figures at all for forced marriages in 15 of the 19 communes in Brussels between 2009 and 2011⁵⁷. Which doesn't mean the phenomenon doesn't exist. But communal employees aren't trained to detect them, contrary to sham or grey marriages⁵⁸. As regards the federal police, 12 complaints concerning forced marriages were registered between 2009 and 2011, whereas no figures on forced marriage were registered by the communal police services during the same period⁵⁹. It would therefore seem that forced marriage isn't registered as such by the federal police services and/or the victims of forced marriage don't go to the police⁶⁰.

⁵⁴ "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, p. 12; N. BENSALD and A. REA, *op. cit.*, pp. 23-36.; E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", speech within the framework of the study day: "Suggestions en vue de l'approche des mariages précoces et forcés en Belgique et dans les pays partenaires de la Belgique", *op. cit.*, 24 March 2015. This speech presents an overview of the results of the European study on forced marriage as a new form of trafficking in Europe. The University of Ghent's International Centre for Reproductive Health provided the Belgian part (ICRH) (study website: www.matrifor.eu (results available in November 2015)). The study confirms the lack of representative data for Belgium on forced marriage, as well as underreporting.

⁵⁵ Press release of 24 March 2015 from the Institute for the Equality of Women and Men, Plan Belgique and ICRH, "Les mariages forcés et précoces: une réalité aussi en Belgique, pas une fatalité". The release also mentions that between 2009 and 2013, 3397 applications for

The situation is slightly different as regards grassroots associations. Some of them, such as the Réseau Mariage et Migration in Brussels and the Service Droit des Jeunes in Liège, are indeed regularly confronted with cases of forced marriage. They deal with 20 to 30 cases a year⁶¹.

The lack of awareness and training of institutional staff with regard to this problem can explain, at least in part, the low number of forced marriages registered. Hence, it is difficult for them to detect potential cases and encourage the victims to come forward⁶². Moreover, just like other types of domestic violence, forced marriage is a phenomenon that takes place within the privacy of the family. Consequently, it is all the more difficult to detect. The official institutions have very little awareness of this phenomenon. Their efforts are mainly oriented towards combating fraudulent marriages⁶³.

However, there are initiatives, in particular those of the Réseau Mariage et Migration, which aim to raise awareness among public prosecutors and police services⁶⁴. A handbook for the use of professionals was also compiled by the Institute for the Equality of Women and Men in collaboration with the Réseau Mariage et Migration and other partners⁶⁵. This handbook serves two purposes: on the one hand, it allows professionals to better recognise potential or actual victims of forced

asylum relating to forced marriage were dealt with by the Commissioner General for Refugees and Stateless Persons (CGRS).

⁵⁶ N. BENSALD and A. REA, *op. cit.*, p. 10.

⁵⁷ *Ibid.*, p. 28.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, p. 29.

⁶⁰ *Ibid.*

⁶¹ "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, p. 12.

⁶² N. BENSALD and A. REA, *op. cit.*, p. 31.

⁶³ *Ibid.*, pp. 60-61.

⁶⁴ *Ibid.*, p. 31 and pp. 40-42.

⁶⁵ Institute for the Equality of Women and Men, "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, available at: http://igvm-iefh.belgium.be/fr/binaries/84%20-%20Mariage%20forc%C3%A9.%20Guide%20C3%A0%20l%27usage%20des%20professionnelles_tcm337-268254.pdf

marriage and, on the other hand, it offers them several possibilities concerning support for the victims.

Since July 2013, the Réseau Mariage et Migration also has an anonymous hotline where victims or potential victims of forced marriages can talk to someone confidentially⁶⁶.

2.2. Profile of victims

In Belgium, forced marriage plans primarily concern young people on the point of becoming adults and forced marriage affects very young adults above all⁶⁷. But there is no set profile for victims of forced marriage: they can be minors or adults, and it could be a first marriage or a forced remarriage⁶⁸. It is also necessary to deconstruct the stereotypes relating to the profile of the victim of forced marriage. This type of marriage can concern both boys and girls and isn't specific to a given group although it can emerge in different groups of foreign origin (East and South Asia, North African, Sub-Saharan Africa and East Africa, Europe and the Middle East). Consequently, it is important to understand each case on an individual basis⁶⁹.

It is also necessary to deconstruct the stereotypes relating to the profile of the victim of forced marriage

There can be a whole variety of reasons why a family imposes a marriage⁷⁰. In particular, it may be a case of maintaining the family's honour and preserving the young girl's virginity, preventing close relationships

considered inappropriate by the family, accomplishing a financial transaction, complying with peer pressure, or pressure from the family or community, etc.

Victims of forced marriage are frequently subjected to violence by their partner (sexual, physical, psychological). In some cases, the victims are exploited by their in-laws and forced to perform household tasks for the whole family⁷¹. Situations such as these can be compared with human trafficking, as we shall see in the next point.

⁶⁶ <http://www.mariagemigration.org/index.php/fr/menu-accueil-tel>

⁶⁷ "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, p. 15.

⁶⁸ *Ibid.*, p. 14.

⁶⁹ *Ibid.*, pp. 14-15.

⁷⁰ On this subject, see "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, p. 18 and E. RUDE-ANTOINE, *op. cit.*, p. 31. This author points out that the reasons behind forced marriages can be linked more specifically to the phenomenon of migration (especially the concern to perpetuate the migration process by the arrival of newcomers' spouses).

⁷¹ "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, p. 21.

3. Forced and early marriage, and human trafficking

3.1. Forced marriage: a form of human trafficking?

Forced marriages and human trafficking share common defining elements⁷². Both involve a coercive element. And in some cases, forced marriage can include actual exploitation: this can be sexual exploitation (marital rape, prostitution, pornography), or economic exploitation (domestic work, for instance). In other cases, early marriages may lead to forced begging or the exploitation of criminal activities⁷³.

Forced marriage isn't explicitly included in the definition of trafficking on an international level (Palermo Protocol⁷⁴), or on a European level (Council of Europe Convention⁷⁵ and European directive⁷⁶). According to these instruments, trafficking consists of three core elements:

- a material act (the recruitment, transportation, transfer, harbouring, etc., of persons);
- exploitation (sexual exploitation, and labour in particular);

- the use of certain means (force, deception, threats, abuse of a position of vulnerability, etc.).

However, forced marriage can be a form of human trafficking if it consists of the core elements. Hence, forced marriage can be a way of recruiting women and girls with a view to sexual exploitation or labour exploitation in particular, or the result or the purpose of the trafficking⁷⁷. In the first case, forced marriage is a *means* that serves trafficking because the marriage is concluded "with the goal of acquiring, buying, offering, selling or exchanging a person for the purpose of exploitation"⁷⁸ (sexual, labour or other). In the second case, forced marriage is the end goal of the trafficking: "here, the victims are first recruited, transported, transferred, harboured or received to be sold as brides, the marriage having been contracted through physical and/or psychological force, with the bride consequently subjected to slavery or physical and/or sexual abuse"⁷⁹.

⁷² On this issue, see E. JIMENEZ, M. LAMBOLEY, M.-M. COUSINEAU, "Le mariage forcé peut-il être une forme de traite en vertu du *protocole additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants?*", *Revue québécoise de droit international*, (RQDI), 2011-2012, 24(2), pp. 91-111, spec. p. 100.

⁷³ On this subject, see below, point 3.3.

⁷⁴ Additional protocol to the United National Convention against Transnational Organised Crime to prevent, suppress and punish trafficking in persons, especially women and children, 15 November 2000.

⁷⁵ Council of Europe Convention No. 197 on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.

⁷⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JAI of the Council, *O.J.*, L101 of 15 April 2011. The European directive calls upon the Member States to include forced marriages in the definition of trafficking.

⁷⁷ In this sense E. JIMENEZ, M. LAMBOLEY, M.-M. COUSINEAU, *op. cit.*, p. 93 and F. BOKHARI, "Stolen futures: Trafficking for forced child marriage in the UK", ECPAT UK, 2009, available at the following link: . According to the United Nations Office on Drugs and Crime (UNDOC), traditional practices such as arranged, early or forced marriages can help to fuel human trafficking (see United Nations Office on Drugs and Crime, *Combating Trafficking in Persons. A Handbook for Parliamentarians*, No. 16 (2009)).

⁷⁸ E. JIMENEZ, M. LAMBOLEY, M.-M. COUSINEAU, *op. cit.*, p. 104.

⁷⁹ *Ibid.*

For the forced marriage to be considered as a form of human trafficking, in certain cases, it must be proved that the marriage fulfils the core elements of trafficking: on the one hand, the use of certain means (force, deception, etc.) by the initiator of the forced marriage and, on the other hand, the exploitation of the married woman⁸⁰. As regards children, the proof of force or other means isn't necessary, since exploitation exists *de facto*. In this case, the marriage can be considered as a form of exploitation in itself, and even as a form of transfer of a child from one adult to another⁸¹.

We know that the Belgian legislator hasn't included the means or *modi operandi* in the definition of trafficking⁸². They are considered aggravating circumstances of the offence. On the one hand, the Belgian Criminal Code requires material evidence of the offence (the recruitment, transport, transfer, harbouring, receiving of a person, taking control of them or transferring control), and on the other hand, the purpose of exploitation (sexual, labour, exploitation of begging, illegal organ harvesting, coercion to commit a crime). As already mentioned, the Belgian legislator specified that by adding the term "taking control" to the definition of trafficking, control is covered especially within the framework of a forced marriage⁸³.

The recent joint circular of the College of Public Prosecutors and the Minister for Justice regarding the fight against human trafficking (COL 01/15)⁸⁴ distinguishes human trafficking from other criminal phenomena such as forced marriage or illegal adoption. In this

respect, it specifies that forced marriage (Art. 391^{sexies} Criminal Code⁸⁵) can be part of the human trafficking process if it serves to exploit the person, for instance, when it is used to take control of a person or transfer the control to someone else. But the victims of forced marriage don't benefit from the protection status granted to the victims of human trafficking, unless they are also the victims of human trafficking.

The notion of transfer of control lay at the heart of a recent decision rendered by the Criminal Court of Verviers. The court concluded the existence of human trafficking in the case of the early (customary) marriage⁸⁶ of two minors. It considered that the obligation for the young girl to be subjected to non-consensual sexual relations within the framework of a customary union could be considered as a form of sexual exploitation falling within the scope of Article 433^{quinquies} of the Criminal Code (trafficking of human beings).

Non-consensual sexual relations with a minor within the framework of a customary union could be considered as a form of trafficking of human beings.

⁸⁰ E. JIMENEZ, M. LAMBOLEY, M-M. COUSINEAU, *op. cit.*, p. 103. According to these authors, the explicit inclusion of forced marriage in the definition of human trafficking will facilitate the criminalisation of traffickers and the protection of victims of forced marriage (*Ibid.*, p. 108).

⁸¹ *Ibid.*, p. 104.

⁸² For the definition of trafficking in Belgian law, see the note above No. 4.

⁸³ See above, point 1.

⁸⁴ COL 01/2015 relating to the policy on investigation and prosecution in terms of human trafficking. On this subject, see part 2, Chapter 1 (recent developments in the legal and political framework), point 2.2 of this report.

⁸⁵ This article aims to stop the behaviour of the person who forces or attempts to force someone to enter into a marriage through violence or threats.

⁸⁶ As previously mentioned, by early marriage we mean any form of union between two persons one of whom is not yet 18 years old.

Early marriage and human trafficking for the purpose of sexual exploitation: Criminal court of Verviers, 30 January 2014¹

In this case concerning the early marriage of two minors, where the young girl was under 16 years old, the parents of these minors were prosecuted in particular for human trafficking for the purposes of sexual exploitation, rape, indecent assault with violence and threats.

Both families wished to set the seal on a romantic relationship between their children. The young man's parents gave a sum of money to the young girl's parents, based on the young girl's state of virginity, in line with tradition. A celebration was organised, after which sexual relations took place between the minors, within the young man's family. From that moment on, the young girl went to live with the young man's family, where she carried out various domestic tasks, leading to absences from school.

The court accepted the charge of human trafficking among other things. It considered that it was indeed question of a transfer of control over the underage girl for the purpose of rape, indecent assault with violence and threats and corruption of youth. The transfer of authority was sealed by the cash payment and the minor "moving house" to reside with the young man's family. Since the accused were aware that the celebration they organised would lead to sexual relations between the children, the court considered that the constituent element relating to the purpose of exploitation ("with the purpose of facilitating the commission [of the crime!"] was also established.

3.2. Early marriages and human trafficking: a few examples in Europe

In the **United Kingdom**, according to a study by ECPAT⁸⁷⁸⁸, children are smuggled to and from this country for the purpose of forced marriage⁸⁹. This involves both British children born in the United Kingdom and "smuggled" out of the country to be married by force abroad, and children "smuggled" into the United Kingdom for sexual exploitation, on the basis of a false promise of marriage⁹⁰. They can also be migrant children who have come to the United Kingdom with false identity papers which make them look older, who have been forced into marriage in their country of origin by a British citizen, or more rarely, married in the United Kingdom⁹¹.

Marriage is used as a method of recruitment in child trafficking: in this case, young girls are recruited and smuggled into the United Kingdom based on the promise of marriage, as fiancées or girlfriends hoping for a better life and then forced into sexual exploitation⁹². This involves the loverboy method (romantic relationship), which is the subject of Chapter 2 of this report.

Concerning forced marriage as a result of trafficking, ECPAT mentions the typical scenario of young British girls, essentially originating from South Asia, who are taken

⁸⁷ ECPAT is the acronym for "End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes". It is an international NGO responsible for combating the commercial sexual exploitation of children.

⁸⁸ F. BOKHARI, "Stolen futures: Trafficking for forced child marriage in the UK", ECPAT UK, 2009, p. 7, available at the following link: http://www.ecpat.org.uk/sites/default/files/stolenfutures_ecpatuk_2009.pdf. The study focuses on 48 cases of trafficking for the purpose of forced marriage. The Forced Marriage Unit (FMU), the government's central unit dealing with cases and the policy on forced marriage, deals with an average of 300 to 500 cases a year, 30 % of which concern children.

⁸⁹ The greatest number of cases concerned population groups originating from Bangladesh and Pakistan.

⁹⁰ This mainly concerns young girls from Eastern Europe.

⁹¹ F. BOKHARI, *op. cit.*, p. 7.

⁹² *Ibid.*, p. 19.

abroad for the purpose of forced marriage. Once abroad, they suffer various forms of violence (physical, psychological) and their passports are taken away⁹³.

In the past few years, **France** has been faced with different forms of crime committed by minors, the most well known being the famous case of the pickpockets in the metro. This involved minors, mainly young Roma girls, who were exploited within the framework of an extensive criminal family organisation, active in several European countries⁹⁴. They were mostly recruited in Bosnia through real or false marriages with a man living abroad who belonged to one of networks' branches. The young girl's family received a sum of money in exchange⁹⁵. In his book on child trafficking, the sociologist Olivier Peyroux⁹⁶ explains how traditions linked to early marriage in force in certain Roma communities are abused for the purposes of exploitation. The family-in-law give a sum of money to the parents of the future bride, which can range from a few hundred euros to more than EUR 100,000. The dowry linked to customary marriage therefore loses its symbolic purpose and becomes the "price of the bride". The young bride then moves in with her new family and becomes their property. She is then used to commit acts of theft, domestic work, and more rarely, for prostitution. Once married through this misused custom, the daughter-in-law has to reimburse the sum paid. In reality, this means

a life of servitude to pay back the debt. In addition, the amount of the dowry paid increases the feeling of loyalty towards the exploitive family-in-law⁹⁷.

There are different methods of control depending on the criminal organisation. The marriage may be false because the husband already has a wife or the young girl becomes part of a family even though she has a real husband. It is often the mother-in-law who exercises control over her daughter-in-law. The degree of exploitation depends on the position held within the family unit. Therefore, the danger is that these children are considered more as prisoners of a cultural system than victims of trafficking, and to use this as an excuse not to raise the question of the protection of these minors⁹⁸.

According to a note relating to human trafficking in **Macedonia**⁹⁹, many underage young girls are married by force and then leave to live abroad. The Roma community in the Republic of Macedonia practices the marriage of young girls aged between 13 and 16 years old as a traditional custom. The young girl's parents choose the partner, often without her consent. The family of the future husband pays between EUR 3,000 and EUR 5,000 for the costs of the traditional wedding ceremony as well as for the young bride's gold jewellery. In reality, this is deviation of the practice of early marriage, which is comparable to the sale of children. These sales of children take place among certain members of Roma communities, which are highly marginalised and live in situations of extreme poverty. These families are targeted by intermediaries operating in Macedonia.

⁹³ *Ibid.*, p. 20.

⁹⁴ This is the Hamidovic case. The head of the clan, Fehim Hamidovic, was sentenced to seven years in prison by the Criminal Court of Paris. This case received a lot of publicity in the press. See://www.lemonde.fr/societe/article/2013/05/15/le-chef-du-clan-hamidovic-condamne-a-sept-ans-de-prison_3233856_3224.html

⁹⁵ O. PEYROUX, *Délinquants et victimes, la traite des enfants d'Europe de l'Est en France*, Paris, 2013, p. 23. See also "La traite des êtres humains dans des situations de conflits et post-conflits", action research, interim report, Caritas, June 2015, p.41, available at the following link: http://contrelatraite.org/IMG/pdf/recherche_action_traite_et_conflits_fr_10_juin_2015.pdf

⁹⁶ O. PEYROUX, *Délinquants et victimes, la traite des enfants d'Europe de l'Est en France*, Paris, 2013, spec. pp. 97 to 101.

⁹⁷ *Lutte contre la traite des êtres humains en Europe du Sud-Est*, letter from the permanent representations, No. 2 February 2015, p. 4, available at the following link: <http://www.delegfrance-onu-vienne.org/la-lutte-contre-la-traite-des-etres-humains-en-Europe-du-Sud-Est>

⁹⁸ O. PEYROUX, *op. cit.*, p. 100.

⁹⁹ Note relating to human trafficking in Macedonia within the framework of forced marriages (mission in Skopje from 7 to 10 July 2014), French Republic (internal document).

The perpetrators of this human trafficking are Roma from Serbia, Kosovo or Macedonia, who are living alone or with their family, legally or illegally in a Western European country. They often belong to a criminal group and it is possible that the members of the group are part of the same family. Local recruiters are hired by a regional recruiter. They are responsible for locating victims and act as an intermediary between the person behind the deal and the young bride's family, negotiating the sum the family will receive. They often provide false information concerning the future husband. Once the victim reaches her destination, she realises the deception: her husband isn't the one shown to her in the photo, and he is often much older. After arriving in their family, the victims' passport is taken from them, they are threatened, forced into domestic servitude, and sometimes raped by their husband, as well as by their father-in-law. They are forced to beg or commit acts of theft.

The main countries of destination for this form of trafficking are Belgium, Germany, France, Italy and Spain.

A young 13-year-old girl was thus identified as a victim of human trafficking within the framework of forced marriage in 2013 in Belgium. This case gave rise to international criminal cooperation. The perpetrator was sentenced to 12 years in prison.

3.3. Early marriages and human trafficking in Belgium

We already mentioned the underreporting of forced marriages at the beginning of this report. It is hardly surprising then that little is known of the phenomenon of early marriage either.

According to an ongoing European study, which (in which?) the University of Ghent is participating in as the Belgian partner¹⁰⁰,

¹⁰⁰ This is the study on forced marriages as a new form of trafficking in Europe (study website: www.matrifor.eu (results available in November 2015) already mentioned

forced marriage in Belgium concerns both long-established ethnic minorities in Belgium (such as the Turks and Moroccans) and new migrants (such as Serbs and Chechens). This phenomenon also concerns women and men, but women have less chance of escaping from or taking action against the situation. This study also reveals that early marriages are a reality in Belgium among Roma¹⁰¹ and Afghans.

A contact person working on the Roma issue also told us of the existence of arranged early marriages among certain Roma communities from the Balkans (Kosovo, Macedonia), who had been living in Belgium for a long time: early marriages are primarily arranged with families living in Germany.

In the past few years, the Esperanto centre, which specifically receives minors who are the presumed victims of human trafficking, has been faced with young girls who have been subjected to early marriages at the age of 12, 13, 14 or 15. In most cases, these marriages (are) arranged by the father, who receives a sum of money in exchange. This leads to situations of domestic exploitation, sexual abuse, even committing offences. In general, this concerns families who have been living in Belgium for quite a while. The young girls have very little education, and sometimes none at all. These young Roma girls, who are married by force, are automatically received by Esperanto because forced (domestic) labour or begging often lies behind these early marriages.

In 2013, this centre received 17 new minors. Four of them were victims of forced marriage or were on the point of entering into such a marriage.

earlier in this report, see note bottom of page 55. It was presented by E. LEYE during the study day: "Suggestions en vue de l'approche des mariages précoces et forcés en Belgique et dans les pays partenaires de la Belgique", *op. cit.*, 24 March 2015.

¹⁰¹ In Sint-Niklaas, a Roma representative said, "among the 60 families we monitor, five have imported a minor as a future bride".

The two victims of domestic exploitation received by the centre were both of Roma origin, and were also the subject of a forced marriage¹⁰². The first young girl was of Serbian origin and had been living in Belgium for several years with her family. She was the victim of an early marriage at the age of 13, having been “sold” in reality to another Roma family living in Belgium. She not only served as a domestic slave, but she also had to satisfy the sexual needs of her husband, who was also a minor. This situation led to the conviction of the young man’s and the young girl’s parents by the Criminal Court of Verviers, for trafficking in human beings for the purposes of sexual exploitation¹⁰³. The facts were revealed thanks to the vigilance of the headmaster of the school the young girl attended. He was concerned about the young girl’s repeated absences and questioned her about this. This led her to reveal the facts.

As a comparison, we would also like to mention a similar case of a young girl who was also subjected to an early marriage and who clearly served as a domestic slave for her in-laws. This young girl was also received by the Esperanto centre in 2012. Contrary to the previous situation, the proceedings initiated for trafficking for the purposes of labour exploitation in this case, led to an acquittal based on a lack of evidence.

Early marriage and human trafficking for the purpose of forced labour: Hainaut Criminal Court, Charleroi division, 13 October 2014, 10th ch.¹

The defendants, a Serbian couple, were prosecuted on the charge of human trafficking for the purposes of forced labour. They were accused of having exploited their daughter-in-law, a minor, within the framework of domestic work in their home. She married the defendants’ son who lived with his family in Belgium. She had already been married two or three times according to local custom. This marriage had been arranged by the defendants and the victim’s mother. The victim instituted civil proceedings at the trial.

In its judgement of 13 October 2014, Charleroi Criminal Court considered that the materiality of the acts of exploitation wasn’t established by the elements in the case. The civil party did indeed perform domestic chores but she wasn’t forced to do all the domestic chores and her mother-in-law maybe worked as much as she did. The court emphasised the fact that while the men were culturally exempt from domestic chores, this wasn’t sufficient to make the civil party the family slave.

The court also considered that the moral element of the offence of trafficking was lacking: even if it was recognised that the conditions in which the civil party was living were contrary to human dignity, it wasn’t proven that she was living with the family with the goal of being exploited by them; the charge requires special intent. The defendants and their four children treated her in accordance with her status as a young person, daughter-in-law and wife.

¹⁰² Esperanto centre’s status report 2013.

¹⁰³ Verviers Crim. Court, 30 January 2014 (final), available at www.myria.be. Also see point 3.1 above.

The defendants maintained that they had no intention of mistreating her or even exploiting her. However, the court did accept that much of the behaviour and remarks made by the defendants and their family, as well as the way in which she was married, were shocking and even disgraceful and that it was possible that the defendants had taken advantage of the civil party's dire situation to bring her to Belgium with the aim of making her do all the domestic tasks. Nevertheless, it considered that the case didn't provide proof that she was the victim of forced labour or that this was the defendant's aim by bringing her over from Serbia and having her live with them. Considering that a doubt remained concerning both the material element and the non-material element of the offence, the defendants were acquitted.

During the appeal, Mons Court of Appeal confirmed the order of acquittal for human trafficking giving the defendants the benefit of the doubt, in its **order of 24 February 2015**.

The second young girl received in 2013, who was found to be the victim of domestic exploitation, was of Romanian origin. Her story is similar to that of the first girl with the difference that the acts took place in France. This unwanted marriage led to the birth of a daughter, which meant that she was constantly threatened with being thrown out by her "in-laws", without her child, if she didn't do as they asked. She also had to bring them money every day which she earned through begging. When she escaped from the family with her daughter and arrived in Belgium, she was then kidnapped. Discovered in France several days later, she was entrusted to Esperanto for security reasons.

Another young girl supported by Esperanto was of Roma origin from Macedonia, and was the victim of exploitation of begging. She had been married before in her country of origin to a young Albanian. This was, however, a marriage she had consented to. While

married, she gave birth to a daughter. The minor complained of domestic violence, both physical and psychological, on several occasions. When the couple wasn't placed in a Fedasil centre, the minor went out to beg with her child. However, it turned out that this was more a form of survival than a constraint imposed on her by her husband. Nevertheless, the young girl was threatened by her husband: if she didn't come back to live with him, he would take their child to Albania. Even though she wasn't the victim of trafficking in the sense of Article 433*quinquies* of the Criminal Code, it was agreed that she and her child should be given special protection.

Esperanto also received young Bosnian girls who were the victims of serious abuse by their families and were about to be subjected to forced marriage. It was decided they should benefit from special protection measures and placement in a protected environment. They were subsequently placed at Esperanto.

In 2014, among the 22 new minors taken in by Esperanto, four were the subject of forced marriages. One of these young girls was obliged to burgle private homes. In 2015, Esperanto revealed that it had several suspicions concerning forced marriage with regard to young persons who were taken in for questioning within the framework of the obligation to commit crimes.

One of the victims taken in by Minor-Ndako¹⁰⁴, the reception centre for vulnerable unaccompanied foreign minors, was a young Romanian girl who was sexually exploited and was forced to beg. She belonged to a group of victims who had to beg and sometimes steal for a number of defendants. She was the partner (unofficial customary marriage) of another victim, an older boy. This case was acquitted by the Criminal Court and Court of Appeal in Ghent, owing to a lack of evidence¹⁰⁵.

¹⁰⁴ Also see hereafter this centre's external contribution, "SOS child victims of human trafficking".

¹⁰⁵ West Flanders Crim. Court, Ghent division, 19 November 2014 and Ghent Court of Appeal, 14 April 2015 (unpublished).

Situations such as these aren't always treated as human trafficking because the young person is afraid of filing a complaint (risk of reprisals, home environment, etc.). Moreover, proof of exploitation is sometimes difficult to report. However, this doesn't alter the fact that the young person must be protected above all.

3.4. Encouraging good practices

As already mentioned, little is known of the phenomenon of forced and early marriages and they are difficult to quantify. It relates to the privacy of the couple and families. Furthermore, it involves areas as sensitive as culture, traditions or religion. The Coordination of NGO for the Rights of the Child (CODE) underlines the fact that this theme "is the source of a difficult debate because it is cultural. It lies at the intersection between standards and values which are thought of as 'fair' both in the eyes of those who criticise them and those who pass them down from generation to generation"¹⁰⁶. And yet, it isn't enough to accept other and respect their specificities, because these practices mustn't contradict basic human rights¹⁰⁷.

As we have seen within the framework of this report, forced marriages are underreported. Forced marriages take place in the private sphere and the victims are reluctant to report the acts to the authorities. They may be driven by feelings of fear, shame or family loyalty. It would also appear that as regards the Roma community, where many early marriages take place, assistance isn't adequate¹⁰⁸. These early marriages aren't considered as forced marriages. There is also little knowledge of and a mistrust of official services¹⁰⁹.

¹⁰⁶ CODE, *Les mariages précoces et forcés, une réalité qui nous concerne!*, CODE analysis, October 2014, p. 1.

¹⁰⁷ On this issue, see E. RUDE-ANTOINE, *op. cit.*, p. 10. Also see http://www.diversite.be/diversiteit/files/File//migratie_migrations/Reactieliefdekentgeengrenzen_fr.pdf

¹⁰⁸ E. LEYE, "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", *op. cit.*

¹⁰⁹ *Ibid.*

Furthermore, we have also seen how the custom linked to traditional marriage in the Roma community is sometimes abused to exploit young girls, especially within the framework of domestic work or to force them to commit acts of theft. While some young girls may have taken it upon themselves to report such acts, the fact still remains that it isn't always easy to detect these acts of exploitation. The young person will perhaps first be considered a delinquent before being considered a potential victim¹¹⁰. In fact, what they need above all is protection. The abovementioned case of domestic exploitation bears witness to the difficulty of providing proof of exploitation, which is taking place within the family sphere.

It would also appear that professionals in the field aren't always aware or equipped to detect potential cases of forced marriages¹¹¹. Hence, few professionals are familiar with the measures regarding forced marriage or the relevant national action plan¹¹². Or perhaps they are frightened of stigmatising certain communities and don't take action owing to a lack of knowledge, expertise or respect for the culture. Consequently, they lack intercultural skills¹¹³. Sometimes, they also don't have the skills or instruments to identify and recognise situations of forced marriage and react inappropriately¹¹⁴. Recorded acts of forced marriage are also lacking. There also aren't enough specialised, safe refuges for minors¹¹⁵.

¹¹⁰ On this subject, see the problem of the non-punishment of victims in Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building trust*, pp. 9-33.

¹¹¹ E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", *op. cit.*

¹¹² This is the 2010-2014 national action plan to combat violence between partners and other forms of domestic violence. This action plan includes a section relating to forced marriages. This plan is available on the Institute for Equality of Women and Men website: http://igvm-iefh.belgium.be/fr/binaries/101123-PAN%20FR_tcm337-113078.pdf

¹¹³ E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", *op. cit.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

And yet, several good practices have already been initiated and these initiatives must be encouraged. Thanks to the national action plan to combat violence between partners and other forms of domestic violence 2010-2014¹¹⁶, the different levels of power have joined forces to develop measures aimed at improving knowledge of the phenomenon and to better combat forced marriages¹¹⁷.

Efforts must also continue to raise awareness, develop skills and provide training for the professional categories faced with such situations (police officers, judges, registrars, teachers)¹¹⁸. The handbook for professionals developed by the Institute for the Equality of Women and Men is definitely a practical tool allowing players in the field to better recognise victims and help support them. Professionals in the field could also be provided with other concrete tools such as indicators allowing them to detect forced marriages rapidly and efficiently¹¹⁹. At the same time, awareness-raising activities such as those developed by the Réseau Mariage et Migration for professionals (training courses) must be maintained¹²⁰.

¹¹⁶ http://igvm-iefh.belgium.be/fr/binaries/101123-PAN%20FR_tcm337-113078.pdf.

There are plans to set up awareness and education actions aimed particularly at young girls and boys and their family circle.

¹¹⁷ A draft action plan for 2015-2019 relating to gender-based violence was elaborated by the Institute for the Equality of Women and Men (IEFH), after consultation with NGO and civil society. Note that as regards early marriages, the proposals for actions focus on the development cooperation policy.

¹¹⁸ The IEFH proposes including the problem of forced marriage in basic and continuing training for professional categories faced with such situations (police officers, registrars, judges, teachers, etc.). See press release of 24 March 2015, *Les mariages forcés et précoces: une réalité aussi en Belgique, pas une fatalité*, available at the following link: http://igvm-iefh.belgium.be/fr/binaries/CP%20Mariage%20forc%C3%A9%2024%2003%202015_tcm337-264829.pdf

¹¹⁹ Note that the handbook for professionals already contains a series of indicators for professionals in the school, medical, police and administrative sectors. See "Mariage forcé ?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, pp. 23-31.

¹²⁰ See <http://www.mariagemigration.org/index.php/fr/menu-formation-espaces-reflexion>

It would also appear that the recording of cases of forced marriage – once they finally have been recognised as such by the competent authorities – by the police and on a legal level, as well as by associations, needs improvement¹²¹.

A specific directive on criminal policy could also be envisaged for the attention of judges and police officers¹²². It would give clear instructions in terms of recording forced and early marriages as well as guidelines concerning possible prosecutions¹²³. Reference persons should be appointed within the police and the public prosecutor's office¹²⁴. Sharing information and collaboration methods within the various sections of the same public prosecutor's office (youth, domestic violence, human trafficking) must also be encouraged. The aim is to be able to make the link, if necessary, between a suspected early or forced marriage and a potential case of human trafficking.

¹²¹ It was suggested that a joint recording system should be implemented for non-judicial cases of forced marriage dealt with by associations in Brussels. On this subject, see N. BENSALD et A. REA, *op. cit.*, p. 63.

¹²² On this subject, see E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", *op. cit.* and IEFH, *Recommandations en matière de lutte contre les mariages forcés et précoces*, presented at the study day, "Suggestions en vue de l'approche des mariages précoces et forcés en Belgique et dans les pays partenaires de la Belgique", 24 March 2015:

http://igvm-iefh.belgium.be/fr/binaries/Recommandations%20mariages%20forc%C3%A9s%20IEFH_tcm337-264800.pdf. For the time being, two circulars are in force concerning domestic violence between partners. The first circular (COL 3/2006) leans towards a definition of violence inside and outside the family, child abuse, the identification and recording of cases by the police services and the public prosecutor's office. The second circular (COL 4/2006) deals more specifically with harmonisation between the stakeholders in the police and the law in terms of violence within couples. But there is no specific circular on forced marriage.

¹²³ See IEFH, *Recommandations en matière de lutte contre les mariages forcés et précoces*, *op. cit.*

¹²⁴ On this subject: IEFH, *Recommandations en matière de lutte contre les mariages forcés et précoces*, *op. cit.*

As regards the potential victims of early or forced marriage, initiatives such as anonymous helplines set up by the Réseau Mariage et Migration, where victims or potential victims of marriages concluded under duress can be heard in complete confidentiality¹²⁵, must be maintained. Actions to raise awareness, especially in schools (on marriage, spouses' rights, its implications, forced marriage) must be encouraged and continued¹²⁶. School is a potential place for the prevention and detection of forced and early marriages, and even human trafficking, as was the case in one of the cases presented in this report. With regard to the Roma community, where early marriages still take place, specific actions should be undertaken, for instance, through intercultural mediators. Awareness campaigns aimed specifically at these communities, especially those suffering from segregation and social exclusion, could effectively be organised¹²⁷.

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The repeated absences of a young person from school, especially if this concerns a young girl, may well be an indication of a potential case of early (forced). As mentioned in one of the cases in this report.

Finally, better collaboration between the different players would also appear to be necessary, as well as sharing expertise and information, especially at an international level¹²⁸. In terms of good practice, we would like to mention a project developed in Verviers: it involves collaboration projects with the police, the public prosecutor's office, the welfare sector and schools in order to guarantee the (potential) victims' safety¹²⁹.

¹²⁵ Note that this helpline is also for professionals who require concrete information for an intervention concerning a user affected by a marriage concluded under coercion. See: <http://www.mariagemigration.org/index.php/fr/menu-accueil-tel>

¹²⁶ For existing concrete initiatives, see: N. BENSALD et A. REA, *op. cit.*, p. 63 and the Réseau Mariage et Migration website: <http://www.mariagemigration.org/index.php/fr/menu-prevention-sensibilisation>

¹²⁷ On this subject see: Council of Europe, *Human rights of Roma and Travellers in Europe*, 2012, not. p. 17 and pp. 104-106.

¹²⁸ On this subject see: E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", *op. cit.*

¹²⁹ IEFH, *Recommandations en matière de lutte contre les mariages forcés et précoces*, *op. cit.*