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Forced marriage in Europe: from a migration problem in a global world to the old phenomenon of gender violence

Les mariages forcés en Europe : d'un problème lié à la migration dans un monde globalisé à l'ancien phénomène de la violence de genre

*Noelia Igareda González**

Riassunto

I matrimoni forzati rappresentano un fenomeno che viene talvolta collegato ai problemi migratori, altre volte essi vengono spiegati come se fossero giustificati o favoriti da alcune religioni o culture, ma raramente sono rappresentati come una forma di violenza di genere. Tenuto conto di questa gamma di diagnosi, esistono differenti approcci, di ordine legale e politico, utili per analizzare questo fenomeno. L'approccio più comune in Europa è quello di mettere in atto misure legali e politiche al fine di controllare i flussi migratori e di evitare i matrimoni fraudolenti. I matrimoni forzati sono solitamente considerati come una forma di traffico di esseri umani o come un'altra forma di violenza contro le donne conseguenza delle direttive europee e della convenzioni del Consiglio d'Europa. In tal senso, negli ordinamenti giuridici nazionali, i matrimoni forzati vengono previsti come un nuovo tipo di crimine. Le vittime dei matrimoni forzati raramente riescono ad avere accesso al sistema di giustizia penale e sono lasciate sole ad affrontare situazioni di grande vulnerabilità, specialmente se si considera che alcune stime di tipo statistico mettono in evidenza che più della metà di esse sono persone minorenni.

Résumé

Les mariages forcés sont parfois définis comme un problème migratoire, à d'autres occasions ils sont expliqués comme s'ils étaient justifiés ou favorisés par certaines religions ou cultures, mais ils sont rarement représentés comme une forme de violence de genre. Compte tenu de cette diversité de situations, il existe sur ce point différentes approches, d'ordre juridique et politique. L'approche la plus utilisée en Europe consiste à prendre des mesures visant à contrôler les flux migratoires et à empêcher les mariages frauduleux. Les mariages forcés sont souvent considérés comme une forme de traite d'êtres humains ou comme un autre type de violence à l'égard des femmes en conséquence des directives de l'Union européenne ou des Conventions élaborées dans le cadre du Conseil de l'Europe. Ainsi, dans les lois nationales, les mariages forcés deviennent un nouveau délit. Les victimes des mariages forcés ont rarement accès au système de justice pénale et sont laissées dans des situations d'extrême vulnérabilité, un constat d'autant plus inquiétant au vu d'estimations affirmant que plus de la moitié d'entre elles sont des enfants mineures.

Abstract

Forced marriages are sometimes defined as a migration problem, other times they are explained as justified or promoted by certain religious or cultures, but they are rarely portrayed as a form of gender violence. Depending on this variety of diagnosis, there are different legal and political approaches to this issue. The most common approach in Europe is to establish legal and political measures to control migration flows and avoid fraudulent marriages. Forced marriages are usually considered a form of trafficking in human beings or another form of violence against women as the consequence of European Union Directives or Conventions under the Council of Europe. Hence in national law, forced marriages become a new crime. Victims of forced marriage rarely have access to the criminal system, and they are left in very vulnerable situations, especially when we consider that estimates state that more than half of them are minors.

Key words: forced marriage; migration; Europe; gender violence; crime.

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1. The problem with the definition of forced marriages.

Depending on how forced marriage is defined and portrayed as a problem in our societies, there are different legal and political responses to prevent and eradicate the phenomenon.

Forced marriage is understood as a marriage where at least one of the spouses is forced to enter into it, by use of physical force or intimidation. Generally, this force is implemented by the victim's own parents, her own family or members of the community.

The confusion between forced marriages and arranged marriages is very common, where both spouses have been chosen by their families or members of their communities, but eventually, both spouses accept this arrangement and enter the marriage willingly. It is true that most forced marriages start off being arranged marriages where one of the spouses refuses to fulfil the commitments adopted, but one cannot affirm that all arranged marriages become forced marriages¹. There are many cultures in southern and eastern countries where the most common way to get married is through arranged marriages. This is especially difficult to understand in western societies where marriage is culturally understood as necessarily built on the basis of "love", and it is difficult to accept this love is present if both spouses have not chosen each other freely². This belief in love as an essential element of a true and legal marriage is not explicitly stated in legal texts,

but it is a recent characteristic of marriage in the history of western societies.

Apart from this initial difficulty, the core problem on how forced marriages are portrayed remains a problem. In Europe, most societies tend to understand forced marriages as a problem linked to migration flows. According to this form of diagnosis, forced marriages are used as a way by nationals of third countries to legally enter Europe. Therefore, forced marriages become a fraudulent use of the marriage institution for illegal purposes, that is, to avoid the migration rules of the European Union. Following this interpretation of the problem, most legal and political efforts are directed to consider forced marriages as a migration problem, and thus, some norms make conditions more difficult for family reunification for migrants already legally living in the European Union³, for instance, by increasing the minimum age of the sponsoring spouse trying to reunify with their third country national spouse⁴, or by examining all mixed marriages or marriages involving a third country national living outside the European Union in order to detect any "fraudulent" marriage or marriage of convenience⁵.

Another important way to portray the problem of forced marriage is as if it were a religious phenomenon. Forced marriages appear as negative and criminal behaviour justified or promoted by certain religions, and an equivalence is established between the communities where forced marriages are frequent and the most popular religious beliefs of these communities. However, none of the most present religions in our societies, Islam, Christianity,

¹ Chantler K., "Recognition of and Intervention in Forced Marriage as a Form of Violence and Abuse", *Trauma, Violence and Abuse*, 13(3), 2012, p. 177.

² Briones I.M., "Los matrimonios forzados en Europa. Especial referencia a Francia, Dinamarca, el Reino Unido, Alemania y Noruega", *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, 20, 2009, p. 4.

³ Elvira M.J., "Matrimonios forzados", *Anuario español de derecho Internacional privado*, nº 10, 2010, p. 713.

⁴ For example, Denmark in 2002 increased the age of the sponsoring spouse to 25 years old.

Judaism or Sikhism justify and /or accept forced marriages⁶.

A third way to understand forced marriages, similar to the previous one, is to explain forced marriages as a cultural issue, as a practice common in certain cultures or communities that appear more uncivilised, barbaric and more sexist. This is clear when forced marriages are included under the category of harmful practices, linked to certain cultures⁷. It is as if harmful practices are only characteristic of certain foreign cultures, and inexistent in western societies and culture (western societies also have significant rates of all forms of violence against women). This is a way of placing the western moral values above all other possible moral references. Western moral and legal norms appear as “rescuers” of other societies and cultures⁸. These two interpretations are commonly used by political groups in western societies to underline xenophobic discourses that contribute to the criminalisation and stigmatisation of certain communities, nationalities and cultures⁹. These political discourses translate into more strict laws and policies with regard to migration, refugees and asylum seekers.

The last interpretation of forced marriages is to understand this problem as a form of gender violence, as a practice that constitutes another form of violence against women in patriarchal societies

where women have less value and are considered as an object of property of their husbands and families. It is true that forced marriages occur both against women and men, but the number of female victims is disproportionately higher, since it is estimated that around 85 per cent of victims of forced marriages are women and girls¹⁰:

“Experiences of FM, which can include a continuum of violent and abusive behavior, abduction, battering, rape and sexual violence, at the point of entry into marriage, during marriage and when attempting to leave such relationships”¹¹.

Moreover, the reason why women and men are obliged to get married against their will is related to gender. Women are forced to marry to fulfil the expected gender roles, as carers, self-denying spouses, devoted mothers and wives. Forced marriages are strongly linked to gender inequality, because women have a role within the community as long as they become good mothers and wives. Therefore, their status and identity depend solely on marriage. In addition, marriage is a social institution conducive to reproductive function, economic maintenance, and also provides social cohesion and peace¹².

The consequences of a forced marriage have also a gender impact¹³. Girls and women forced to marry, lose the opportunity of any professional career or personal chosen path and aims, as they become tied to the authority of their husbands or the latter’s family. They are forced to live in their husbands’

⁵ For example, France introduced some measures in 2003 to examine possible fraudulent marriages.

⁶ Heaton QC C., McCallum L., Jogi, R., *Forced Marriage*, Family Law, Bristol, 2009, p. 139.

⁷ Gill and Anitha, *Forced marriage. Introducing a social justice and human rights perspective*, Zed Books, London and New York, 2011, p. 12.

⁸ Jaggar A., “Saving Amina: Global Justice for Women and Intercultural Dialogue”, *Ethics and International Affairs*, Volume 19, issue 3, December 2005, p. 67.

⁹ Shariff F., “Towards a Transformative Paradigm in the UK Response to Forced Marriage: Excavating Community Engagement and Subjectivising Agency”, *Social and Legal Studies*, 21(4), 2012, p. 555.

¹⁰ Heaton QC C., McCallum L., Jogi R., *Forced Marriage*, Family Law, Bristol, 2009.

¹¹ Gill and Anitha, *Forced marriage. Introducing a social justice and human rights perspective*, Zed Books, London and New York, 2011, p. 39.

¹² Igareda N., “Matrimonios forzados: ¿otra oportunidad para el derecho penal simbólico?”, *InDret. Revista para el Análisis del Derecho*, 1/2015, p. 11.

¹³ Gangoli G., Chandler K., “Protecting Victims of Forced Marriage: is Age a Protective Factor?”, *Feminist Legal Studies*, 17, 2009, p. 269.

houses and generally break all contact with their own family and friends. If they are forced to marry against their will, this may represent the beginning of a life full of other forms of gender violence: physical, sexual, psychological, economic violence, unwanted pregnancies and others¹⁴.

As well as the above, girls and women are generally forced to marry against their will at earlier ages than men. They cannot reject the candidate chosen by their parents or relatives. However, men forced to marry are slightly older, have had a better education or economic opportunities, and their families allow them a certain degree of choice: for example, they might be able to choose between several candidates, or to postpone the marriage until they have reached a certain economic stability.

Despite the latest European attempts to approach forced marriages as a form of gender violence (as described in the next item, as a new form of trafficking in human beings under the European Union regulations, or as a form of violence against women as per the Council of Europe norms on violence against women), this is the explanation of forced marriage which is less frequent around the Member States of the European Union. Probably, because this presumes that forced marriage could be also a practice within our societies and western cultures, and is not only a problem or a crime of “others”.

2. Forced marriages in Europe: a new form of trafficking in human beings and a gender violence crime.

The latest approach to forced marriages by the European Union has been to consider it as a new form of trafficking in human beings under the EU

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/JHA (Directive 2011/36/EU). This Directive has obliged all Member states to include forced marriage as a form of trafficking in human beings under the national legislation.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) already considers forced marriages as a form of gender violence and obliges participating countries to include forced marriages as a crime in their national legislations.

Most countries have amended their trafficking in human beings' legislations according to this new Directive 2011/36/EU, although they do not always mention explicitly forced marriages within the list of form of trafficking in human beings (for example, Italy). Other countries have amended their legislation on trafficking in human beings, and have included forced marriages as a new crime (as, for example, Spain). However, in order to prosecute forced marriages as a form of trafficking of human beings, one must prove “the recruitment, the transportation, transfer, harbouring or reception of persons”; secondly “the use of force or other forms of coercion”; thirdly “the giving or receiving of payments or benefits for the purpose of exploitation”. Understandably, it is very difficult to prove all these conditions in the cases of forced marriages.

Since the Istanbul Convention entered into force on 1 August 2014, most of the participating countries have included forced marriages as an individualised

¹⁴ Heaton QC C., McCallum L., Jogi R., *Forced Marriage*, Family Law, Bristol, 2009, p. 141.

crime under their national legislation¹⁵. Most countries have fulfilled this commitment, but this new crime is not always explicitly recognised as a form of gender violence; for example, it can be considered as an aggravated form of coercion (Spain). In fact, forced marriages often appear criminalised twice in national legislation, once as a form of trafficking in human beings and another as a separate crime, such as coercion or similar (this is the case of Spain¹⁶ and Belgium¹⁷).

In total, in seven Member States of the European Union (Austria, Belgium, Croatia, Cyprus, Denmark, Germany and the United Kingdom) forced marriage constitutes a crime.

In other Member States, forced marriage can be punished as far as it constitutes another crime such as rape, attempted rape, physical, psychological or sexual violence, injuries, assault, false imprisonment, psychological, sexual coercion, kidnapping, crimes against sexual freedom or honour crimes¹⁸.

Nevertheless, there is not enough data and surveys on how many cases of forced marriages have been prosecuted under the form of trafficking in human beings and how many as an individual crime of forced marriage. In fact, existing data in some of these countries, as for example Belgium, Spain or Italy¹⁹ revealed that very few cases of forced marriages are finally criminally prosecuted, and when they are, they are considered a form of sexual

exploitation, or a form of illegal detention, or physical aggression.

As a result, it seems the criminalisation of forced marriages constitutes a symbolic example of the use of criminal law rather than a real willingness to criminalise and sanction this problem²⁰. By symbolic use of the criminal law we mean when a new crime is created to decrease social concerns on certain delinquency, rather than to reduce the crime²¹.

The intention was similar in criminalising female genital mutilation, where the real aim was to send a message to the communities where this practice is common to warn them and educate these cultures that these practices are not tolerated within western communities²².

Further to the above, all stakeholders involved in preventing and fighting against forced marriage agree that, despite the lack of agreement on whether the criminalisation of forced marriages is useful or has more countereffects and negative consequences, if there are not economic resources and public policies destined to prevent and support the victims of forced marriages, its consideration solely as a crime does not contribute at all to eradicating the problem²³. On the contrary, if a new crime on forced marriage is the only measure adopted by our

Prevention of and Fight against Crime (<http://www.matrifor.eu/project>).

²⁰ Bergalli R., Bodelón, E., “La cuestión de las mujeres y el derecho penal simbólico”, *Anuario de Filosofía del Derecho*, 9, 1992.

²¹ Díez Ripollés J.L. “El nuevo modelo penal de seguridad ciudadana”, *Anuario de Filosofía del Derecho*, 22, 2005, p. 23.

²² Maqueda L. “¿Es la estrategia penal una solución a la violencia contra las mujeres?”, *InDret*, 4, 2007, p. 16.

²³ See, for example, some qualitative studies done on the field of forced marriages in Europe like for example the Matrifor Project “Approaching forced marriages as a new form of trafficking in human beings” financed by the European Commission under the Programme Prevention of and Fight against Crime (<http://www.matrifor.eu/project>). In depth interviews with stakeholders with direct or indirect competencies on the prevention and intervention on forced marriages were carried out. These involve the police, educational, social services and health sectors.

¹⁵ Article 37.1 of the Istanbul Convention obliges Member States to criminalise forced marriage as a form of violence against women.

¹⁶ In articles 172 Bis and 177 Bis of the Spanish Criminal Code.

¹⁷ In Article 433quinquies and article 433novies of the Belgian Criminal Code.

¹⁸ European Union Agency for Fundamental Rights (FRA), *Addressing forced marriages in the EU: legal provisions and promising practices*, European Union, Luxemburg, 2014.

¹⁹ According to the Matrifor Project “Approaching forced marriages as a new form of trafficking in human beings” financed by the European Commission under the Programme

societies, it will produce more negative effects of criminalisation and stigmatisation of these communities, rather than protecting the victims and contributing to its prevention²⁴.

3. Forced marriages in Spain.

Spain is a good case to study the phenomenon of forced marriage in Europe, its invisibility in terms of political agenda, its criminalisation following European legal initiatives, and the lack of real measures to support the victims, and address this severe violation of human rights with a clear gender impact.

Spain has a large presence of foreign population²⁵, and in some areas of the territory, like for example Catalonia, a significant percentage of foreign nationals are made up of communities where forced marriage is frequently practised²⁶, such as Pakistan, India, Bangladesh, Morocco, China, Gambia or Senegal²⁷.

Despite the important weight of these communities and the certainty that forced marriage is a widespread practice among most of them, there is

no available data on its prevalence, nor on its prosecution as a form of trafficking in human beings or as a specific crime of forced marriage. The only available data is that provided by the Catalan Police, since the Catalan law 5/2008, of 24 April, to eradicate sexist violence, recognises forced marriages as a form of gender violence, and therefore forces the Catalan Police record any cases of forced marriages in the Catalan territory²⁸. Nevertheless, even the Catalan Police forces recognises that this data represents a tiny percentage of the real cases taking place in the Catalan territory²⁹, since in most cases, the last resources where girls and women would look for help, would be the police.

Linked to this invisibility in terms of statistics and data, there is an almost complete absence of visibility in the political agenda. Few cases are known and made public, and when the mass media has covered those cases, they appear as isolated and extreme incidents or some undeveloped and barbaric cultures that still maintain medieval practices involving their girls and women³⁰. As a result, politically speaking, forced marriage is portrayed as a problem of “others”, another manifestation of fanaticism and extremism. It does not deserve any political attention, apart from police and migration policies to monitor and control those communities and secure their assimilation to the western culture as much as possible.

²⁴ Gill and Anitha, *Forced marriage. Introducing a social justice and human rights perspective*, Zed Books, London and New York, 2011, p. 10.

²⁵ According to the National Institute of Statistics, in 2013, there were important communities from countries where arranged marriages are very frequent (and therefore, forced marriage can take place): Morocco (186,316 women aged 16-44); China (53,376 women aged 16-44); Pakistan (10,175 women aged 16-44); Senegal (7,658 women aged 16-44); Nigeria (13,426 women aged 16-44); India (7,297 women aged 16-44); Mali (1,644 women aged 16-44); Gambia (2,735 women aged 16-44); Bangladesh (1,838 women aged 16-44).

²⁶ Elvira M.J., “Matrimonios forzados”, *Anuario español de derecho Internacional privado*, nº 10, 2010, p. 708.

²⁷ In the city of Barcelona alone, there is a large population from some of these countries, such as 19,414 (of which 24.5% are women) from Pakistan, 17,487 (of which 50.7% are women) from China, 12,601 (of which 42.2% are women) from Morocco, 5,105 (of which 28.12% are women) from India, 3,439 (of which 24.41% are women) from Bangladesh, 1,182 (of which 17.79% are women) from Senegal and 1,095 (of which 25.94% are women) from Nepal (Source: City Census, Department of Statistics, Barcelona City Council, January 2015).

²⁸ The Catalan Police forces have registered 101 cases of forced marriages in Catalonia from 2012 to 2015. Sixty per cent of these cases correspond to minors, and 8 out of 10 women are aged 13-20 (Source: Catalan Police).

²⁹ Despite these recorded cases, only 14 cases (of which 10 were minors) received a formal complaint in 2016; in 2015, 15 cases (8 of them minors) received a formal complaint. (Source: Department of Home Affairs, Government of Catalonia).

³⁰ Jaggar A., “Saving Amina: Global Justice for Women and Intercultural Dialogue”, *Ethics and International Affairs*, Volume 19, issue 3, December 2005, p.55.

However, and despite this lack of political and public interest, forced marriages have been criminalised twice in the Spanish Criminal Code since the criminal code reform in July 2015. Since then, forced marriage has been considered a form of trafficking in human beings under article 177 Bis, and as a crime of forced marriage as aggravated coercion in article 172 Bis. Both articles correspond to the commitments the Spanish state had under the EU Directive on trafficking in human beings and under the Istanbul Convention.

Generally, cases of forced marriages have been sentenced under these articles so far³¹. Only some cases of forced marriages have reached the criminal courts as cases of illegal detention and physical violence against girls or young women.

There is no type of public policy to prevent forced marriages as a form of trafficking in human beings or gender violence, neither at national nor at autonomous community level. Exceptionally, there has been a Protocol on forced marriages by the Catalan Police since 2009³², and a Protocol on forced marriages in the province of Girona³³, that coordinates social services, health, educational and police resources to prevent and act in cases of forced marriages, but limited to the territory of the province of Girona.

Another Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012

establishing standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/HJA (Directive 2012/29/EU) has mainly been transposed through the approval of law 4/2015, of 27 of April, on the status of the crime victims (entered into force on 27 October 2015). This new law has included special protection measures for victims of trafficking in human beings and gender violence. But in order to benefit from these measures, victims of forced marriages should be recognised as victims of trafficking in human beings under article 177 Bis of the Spanish Criminal Code or as victims of gender violence. The Spanish legislation on gender violence only admits that special attention should be given to victims of crimes committed by the spouse or a person with a similar affective link, regardless of whether they live together, or to children, parents or siblings and crimes against the sexual freedom and indemnity (not including victims of trafficking in human beings or victims of forced marriage).

The few surveys on victims of forced marriages in Spain³⁴ showed that victims of such a crime rarely make a criminal complaint; even less frequently do they resort to the police forces for help. On the rare occasions they do seek help, it is to social services, migration resources or health personnel with very close contact with these communities and where a relationship of trust has been formed with the latter in small towns or cities. It is important to note that according to the little data available and the estimates derived from qualitative studies, almost

³¹ Spain collects statistics of trafficking in human beings, but since forced marriage until very recently was not included as a form of it, there are no such statistics in national level. The Report of the Spanish Ombudsman 2012 on "Trafficking in human beings in Spain. Invisible victims" reports that the most documented form of trafficking in human beings is that of sexual exploitation, since there are more legal complaints. The other forms of trafficking in human beings are not sufficiently significant in the official statistics: forced labour or servitude, domestic servitude, forced marriages, extraction of body organs, exploitation for begging and war.

³² Catalan Protocol for Prevention of and Support to Forced Marriages, June 2009.

³³ Protocol to Tackle Forced Marriages in the province of

Girona, December 2014.

³⁴ See for example "Forced marriage in Spain: a qualitative report" within the Matrifor Project "Approaching forced marriages as a new form of trafficking in human beings" financed by the European Commission under the Programme Prevention of and Fight against Crime (available in

half of the victims of forced marriages are minors and consequently their situation of vulnerability is more extended and it is trickier to find help.

Few victims receive support or help from the community services, and when they do, it is normally as victims of domestic violence and within the general women's shelters or social resources destined for victims of gender violence. The few who have had contact with the courts have very negative experiences³⁵. The most recent legal history shows many examples where criminal law has been unable to respect the will of women; on the contrary, the use of the criminal law has contributed to reinforcing certain gender stereotypes, as for example, a passive and compliant woman, without education as in the case of forced marriages³⁶.

Apart from the above, one must consider that many of the victims are minors, and their situation as victims of any violence or a vulnerable situation normally means they enter a children's shelter, and are separated from their families, siblings and community.

4. Conclusions.

Forced marriages are normally portrayed as problems linked to migration flows and as a consequence of multicultural societies where assimilation processes have not been properly established.. They are rarely approached as another form of gender violence, and consequently treated by the laws and public policies as another manifestation of patriarchal societies.

http://www.matrifor.eu/sites/default/files/pdf/Analytical_report_Spain.pdf

³⁵ Igareda N., "Matrimonios forzados: ¿otra oportunidad para el derecho penal simbólico?", *InDret. Revista para el Análisis del Derecho*, 1/2015, p. 10.

³⁶ Gill and Anitha, *Forced marriage. Introducing a social justice and human rights perspective*, Zed Books, London and New York, 2011, p.11.

As a result, the few attempts to prevent or intervene in forced marriages are limited to their criminalisation. There is more focus on a symbolic use of criminal law, rather than a real willingness to criminally prosecute and eradicate this practice. The law is used to send a message to those communities where forced marriage is still practised to change their "barbaric and uncivilised" habits which are incompatible with western moral values.

The invisibility of forced marriages as a form of violence against women means that it is limited to the problems of other cultures and communities, and it is not a phenomenon which occurs across all societies and cultures, including western ones, which also have "harmful practices" against women. Another consequence of this legal and political approach is that victims of forced marriage are left in very vulnerable situations. Firstly, because approximately half of them are minors, and their access to justice, the few times that take place, causes more negative effects than benefits or protection.

Secondly, because if they receive any type of support from the community services or the judicial system, it is as victims of domestic or family violence, and rarely as victims of trafficking in human beings or forced marriage, which is the aim of the most important European legal tools.

And thirdly, due to the lack of visibility in the political agenda and public opinion, most potential stakeholders with potential responsibilities or competencies in preventing or fighting forced marriage do not have specific knowledge on forced marriage. This frequently means that they are unable to identify a case of forced marriage, nor even provide the victim with adequate counselling and support, and even less so, implement any type of measures to prevent it.

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