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**OVERVIEW OF LEGISLATION IN THE EUROPEAN UNION
TO ADDRESS FEMALE GENITAL MUTILATION:
CHALLENGES AND RECOMMENDATIONS FOR THE
IMPLEMENTATION OF LAWS**

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1. Introduction

Female genital mutilation exists in the EU. Due to migration from practicing communities to Europe, FGM has travelled with them. Although no national reliable data on the number of women with genital mutilation or the number of girls at risk are available, FGM has raised concern at EU policy making level, at legislative level,

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are applicable to the practice of FGM and can be used to prosecute FGM in the court of law.

In the past decade, we increasingly witnessed the introduction of specific legal provisions to prosecute and punish FGM in the Europe. Moreover, European countries were urged by the European Parliament⁷ and Council of Europe⁸ to adopt specific legal provisions to prosecute and punish FGM. Some countries in Europe developed specific legislation on FGM. Currently, several national governments as well as the European Parliament, are debating how current criminal laws can be better implemented.

Specific vs general criminal provisions

Currently, specific criminal provisions have been adopted in 10 European countries: Austria, Belgium, Cyprus, Denmark, Italy, Norway, Portugal, Spain, Sweden and the UK.

Sweden, being the first western country to legislate against the practice⁹

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legal amendment should still be approved before this summer, making Switzerland the 11th country in Europe with specific criminal provisions to combat FGM.

In all other European countries, FGM can be prosecuted and punished under general criminal law provisions in the Penal Code.

Extraterritoriality

Prosecuting and punishing FGM in Europe would not be effective unless the principle of extraterritoriality applies to these criminal provisions - both specific and general. Most frequently, girls and young women undergo FGM when they are "on holiday" visiting relatives in their country of origin. The principle of extraterritoriality renders it possible to prosecute the practice of FGM when it is committed outside the borders of one of the European countries.

Conditions for the application of this principle differ: often, either the offender or victim - or both - must be a citizen or at least a resident of the European country, and sometimes FGM must also be considered an offence in the country where the crime was committed (double incrimination).

The large majority of European countries include the principle of extraterritoriality in the criminal provisions, making it possible to prosecute FGM even if it occurs in African, Asian or Middle-Eastern countries. The exceptions are: Greece, Ireland and

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protection of children from abuse can be applied. Child protection laws exist in all Member States.

In the case of girls at risk of FGM, either voluntary child protection measures are undertaken, such as hearings with the family, providing information, counselling and warnings to the family; or compulsory child protection measures, such as removing a child from the family or suspending parental authority. Certain compulsory child

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The ultimate goal is to try to motivate these families to change their behaviour by regularly engaging in conversation and discussing the issue during medical check-ups by school physicians and also by informing the teachers to watch for signals of FGM.

Professional secrecy provisions

All Member States have also foreseen professional secrecy provisions, most frequently targeted at health professionals, social workers and teachers. However, there are great differences between countries whether these professionals have a "**duty to report**" or merely are offered the "**right to report**".

Only the right to report for professionals is applied in Belgium¹⁹, Ireland, Germany and The Netherlands²⁰.

The duty to report for at least 1 category of professionals is applicable in the following countries:

Austria (doctors), Bulgaria (teachers), Cyprus (doctors and social workers), Denmark (all three), Estonia (all three), Finland (all three), France (all three), Greece (teachers), Hungary (doctors), Italy (doctors and social workers), Norway (practitioners and public personnel/bodies), Poland (all three), Portugal (all three), Slovakia (all three), Slovenia (all three), Spain (all three), Sweden (all three), Switzerland (state employed social workers and teachers).

In a range of countries, even **citizen's** have the duty to report FGM to the social services or prosecution authorities: Cyprus, France, Greece, Hungary, Norway, Slovakia, Slovenia, Spain, Sweden and the UK.

3. Implementation of laws addressing FGM in Europe

As mentioned earlier, 10 European countries have **specific** criminal provisions to tackle FGM.

However, out of these 10 countries, criminal court cases under the specific law are limited:

- **Sweden:** In 2006, there were two cases brought to court and tried under the specific criminal law on FGM. In one case a mother was charged, while the other case involved formal allegations against a father. Both cases led to convictions and prison sentences of respectively three and two years.
- **Denmark:** Recently, in January 2009, a mother was sentenced to a two-year prison sentence for FGM.
- **In Norway** a criminal case on FGM (absolute first) is ongoing in court.

¹⁹ With the exception of 422bis SW: duty to assist persons in need - conditions apply

²⁰ Secretary of State (Bussemaker) announced that there are plans to formalize the "reporting code": when a doctor, teachers or social worker suspects FGM, he or she must act on it by informing a colleague or the central notification board.

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In **Spain** there have also been three cases of criminal prosecution, but all three court cases were still treated under the general criminal law provisions (1993, 2000 and 2002), before the specific law was introduced in 2003.

Several countries with **general** criminal laws reveal a different scenario:

- **France:** The country with the most criminal court cases and the best track record in prosecuting and punishing cases of female genital mutilation is France. At least 37 cases have been tried in the "Cour d'Assises", the highest criminal court in the country, resulting in extensive media coverage on the topic of FGM in France. France has no specific criminal provisions on FGM. All these cases were brought to court and tried under the general criminal law (art. 222-9/10 of the Penal Code concerning mutilation).
- **Switzerland** has seen two criminal court cases, both of which were tried under the general criminal law in 2008. In the first case a woman was sentenced to 6 months in prison for not having protected her half sister from FGM. The second case led to suspended prison sentences of two years for parents who had subjected their daughter to FGM in Switzerland.
- In the **Netherlands** there is currently a criminal court case on the grounds of FGM, which is an absolute first in the country.

Preliminary data of research on FGM legislation in EU member states, reveal the following information:

- **Austria:** specific law - suspected cases reported by an NGO - doctors' duty to report
- **Denmark:** specific law - 1 criminal court case - duty to report
- **Finland:** general law - several notifications to child welfare - duty to report
- **France:** general law - 37 criminal prosecutions - reported & suspected cases (including child protection reports) - duty to report (compulsory and standard genital examination for all young girls up until the age of 6 by PMI²¹-physicians) - regional guideline in Paris - recently (15 April 2009) the government launched a new campaign against FGM (including informational brochure for the prevention of FGM)
- **Germany:** general law - child protection interventions and suspected cases - right to report - campaign (started in 2008) to educate German doctors on FGM
- **Norway:** specific law - 1 criminal case - many reports - national Action Plan for combating FGM (including guidelines with a description of roles, tasks and responsibilities of health providers, child welfare services and the police)
- **Portugal:** specific law - suspected cases - duty to report - Inter-institutional working group between NGO's and public bodies to implement a range of measures in the area of prevention, sensibilization, formation and cooperation – national Action Plan
- **Spain:** specific law - 3 criminal cases under previous general law - reported cases - duty to report - regional action plans and protocols in Catalonia and Aragon

²¹ Protection Maternelle Infantile: Mother and Child Healthcare. These services are public and play a preventive role through education, help and counselling.

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- **Sweden:** specific law - 2 criminal cases - reported cases (including 1 case of temporary detention) - duty to report - National Action Plan (expired in 2007)
- **Switzerland:** general law - 2 criminal cases - reported and suspected cases (including child protection cases) - duty to report - Explicit prevention programme in canton of Geneva and preventive genital screenings in canton of Zurich.
- **The Netherlands:** general law - 1 recent criminal case - suspected and reported cases - guidelines (prevention protocol) for professionals (health education and social welfare sector).
- **United Kingdom:** specific law - reported and suspected cases - duty to report - National FGM Action Plan and Multi-agency prevention & awareness campaign

Countries with a specific criminal law, but without prosecutions or reported

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In 2004, we finalised an in-depth analysis of the implementation of laws in 5 countries. The following is a summary of the main conclusions of this analysis.

A number of factors obstruct an effective implementation of both criminal laws and child protection laws, when it comes to FGM. These factors are related to the *knowledge* and *attitudes* of those confronted with FGM – both professionals and practicing communities - that have an influence on the process of law enforcement, including the reporting of cases, finding eviden

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among EU countries, but also between Europe and Africa. A further impediment to finding sufficient evidence is the difficulty of assessing if FGM has been carried out, particularly the case of Type I and IV FGM (small incisions, pricking). Another obstructing factor to prosecution is the difficulty of assessing when FGM was performed, as shown by research in Sweden, where the principle of double incrimination was only removed in 1999, making it difficult to prove that acts of FGM done before 1999 were illegal if performed in a country where it is not a criminal offence. Furthermore, providing evidence that FGM was performed in any particular country is problematic, especially where there are no medical records of the procedure, and when FGM is performed in remote areas of a country where it is not policed as a criminal offence. Finally, communities do not easily reveal names of excisors, which does not facilitate finding the perpetrator of the action. The case of the excisor who was arrested in France, and whose address book resulted in numerous court cases against parents who had had their daughters excised, is much more an exception than the rule.

Protection of girls at risk of FGM

Compulsory child protection measures to protect a girl at risk of FGM, such as withholding the passports of girls or withdrawing the girl from parental authority, are only implemented when counselling, hearings and partnership working with the family did not succeed. In the UK for example, a Prohibitive Steps Order²⁷ is only considered after advice and counselling have been unsuccessful and removal from home is considered only as a last resort. Clearly, a measure such as seizing the passport of a girl can be seen as an intrusion into the privacy of a family, and concerns about how the enforcement of laws will be monitored are legitimate. On the other hand, the lack of protective mechanisms for girls who are travelling to Africa, has resulted in an unknown number of girls that do not return from holidays, and who are thought to be cut while on visit in the native country. Protocols and guidelines to protect girls from FGM are valuable instruments to enhance the protection of girls from FGM, but are not available at country and European wide level, which might increase the risk of cases going unreported. There is an urgent need to further investigate how measures to protect girls from FGM can be implemented successfully, and how protective mechanisms in European countries as well as existing African traditional protection systems should be further developed.

5. Conclusion and recommendations

FGM has received considerable attention by legislators and other actors and in many European countries they have responded by enacting specific legislation regarding FGM. However, the number of cases brought to court has been limited because of issues around conditions attached to extraterritoriality, the

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