Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Roma "Bride Price" as the Crime of Enslavement in Italian Courts: A Missed Opportunity for Anthropological

Question(s) at stake:

Whether the Roma cultural practice of "bride price" constitutes enslavement.

Outcome of the ruling:

The defendant – the father of a Roma bride – was convicted of the crime of enslavement for having received a sum of money from the groom's family on the occasion of his daughter's marriage.

Topic(s):

- Crime and Punishment under State Law
- Personal Status, Family and Inheritance

Keywords:

- Children's rights
- Cultural defense
- Human dignity
- Mitigating circumstances
- Trafficking
- Violence against women
- Child marriage
- Customary marriage

Tag(s):

- Bride price
- Gypsy marriages

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Country:

Italy

Official citation:

Supreme Court of Cassation, Decision of 13 May 2021, No. 30538 (Suprema Corte di Cassazione, Sentenza del 13 maggio 2021, n. 30538)

Link to the decision:

https://pg-firenze.giustizia.it/cmsresources/cms/documents/Cassazione%2030538-21.pdf

ECLI:

No ECLI number / ECLI number unknown

Date:

13 May 2021

Jurisdiction / Court / Chamber:

Supreme Court of Cassation

Remedy / Procedural stage:

Last instance court

Previous stages:

- Court of Assizes of Appeal of Florence, 16 October 2019
- Court/Tribunal of first instance, “not publicly available”

Subsequent stages:

None.

Branches / Areas of law:

Criminal Law, Constitutional Law, Fundamental Rights

Facts:

A man of Roma ethnicity, permanently settled in Italy, organized the wedding of his 15-year-old daughter according to the traditional ritual of his culture. Accordingly, he received from the groom's family the "bride price", a sum of money that is customarily given by the groom's family to the bride's family on the occasion of the marriage or engagement of the two future spouses.

This engagement was not followed by the celebration of the marriage due to misunderstandings between the future spouses. After the termination of their engagement, the girl reported the facts to the judicial authorities and was placed in protective custody (for example, in a shelter for women, children, or other vulnerable persons operated by the state).

The denunciation led to the indictment of the girl's father for the crime of enslavement (Art. 600 Italian Criminal Code): in the view of the judges, the father's acceptance of that sum of money constituted an actual sale of the girl.

The girl's father put forward a cultural defence, requesting that the act not be considered a crime as it was not carried out for the purpose of buying and selling his daughter but for a simple ritual purpose and in deference to a cultural tradition. The defendant identified the institution as "bride price" and placed it in the context of the traditional marriage rite typical of certain Roma ethnic groups.

The judges of first and second instance took the cultural defence partly into account: they recognized that the father's affection for his daughter was sincere and that he had acted to honour a Roma marriage tradition. The judges relied on the testimony of the defendant: no further anthropological investigation of the practice was requested, nor were cultural experts consulted.

The defendant was convicted of enslavement at first and second instance. In the second instance (the Court of Assizes of Appeal), the judges confirmed the conviction but granted general mitigating circumstances in favour of the

defendant, namely a reduction of the penalty imposed at the first instance. The Court of Assizes of Appeal reasoned that the cultural connotation of the practice could justify a decrease in the penalty because of the “particular subcultural condition” in which, according to the judges, the offender found himself, but not to an acquittal on cultural grounds because the exchange of money took place and Article 600 prohibits it. Therefore, the judge allowed only mitigating factors.

Both the public prosecutor and the defendant appealed that verdict to the Supreme Court of Cassation: the prosecutor seeking to overturn the reduction of penalty, and the defendant requesting full consideration of the cultural defence.

Ruling:

A man of Roma ethnicity, permanently settled in Italy, organized the wedding of his 15-year-old daughter according to the traditional ritual of his culture. Accordingly, he received from the groom’s family the “bride price”, a sum of money that is customarily given by the groom’s family to the bride’s family on the occasion of the marriage or engagement of the two future spouses.

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Main quotations on cultural or religious diversity:

"The issue brought up by the appellant is that of so-called 'cultural offences'. 'Cultural offence', a formula used to translate into legal terms the conflict that arises between traditional customary systems and state systems in the presence of conduct by a person who recognizes himself as belonging to a minority cultural group that accepts such conduct as normal or approves or even encourages it insofar as it considers it to be in conformity with the customs and religious or social traditions constituting the identity of that group, but which, on the other hand, is considered illegitimate by the legal system – undoubtedly an expression of the dominant culture – in force in the place where the aforementioned conduct is carried out. To simplify, the problem can be defined as that of the relevance of a normative conflict determined by the antinomy between the penal norm and a culturally grounded rule for the purposes of affirming the responsibility of the

person who has violated the former in order to conform to the latter". (para. 4.1.)

"There is no doubt that the 'cultural factor' is capable of transversally running through the structure of the offence, being able to intersect both the elements aspect of the typical nature of the fact and its offensiveness, as well as that of its unlawfulness, but also those of culpability and of the commensuration of the punitive treatment, at least from the perspective of the personalization of the judgment of culpability, of the re-educative and re-socializing function of punishment, and of a substantial approach to the principle of equality". (para. 4.2)

"[T]he Court has over time consolidated a different approach to the subject [culturally motivated crimes], eschewing the alternative which, with extreme simplification, is identified as that between assimilationism and multicultural relativism. In this sense, it has been observed that the interference of the cultural motive with the structural elements of the crime must be assessed from the point of view of 'the careful balancing between the right of the offender not to deny his own cultural, religious, and social traditions, which is also inviolable, and the values offended or endangered by his conduct.'[…] It is therefore substantially recognized that the right of the individual to the protection of his or her own cultural and religious identity derives from the confessional and cultural pluralism outlined in Articles 2 and 8 of the Italian Constitution (Constitutional Court no. 63 of 2016, Constitutional Court no. 440 of 1995, and Constitutional Court no. 203 of 1989), as well as from numerous supranational sources – including Articles 8, 9, and 14 of the European Convention on Human Rights, the UN Convention of Paris of 20 October 2005 on the protection and promotion of the diversity of cultural expressions, ratified by Italy with Law no. 19 of 19 February 2007, and Article 22 of the Nice Charter. 22 of the Nice Charter – the individual's right to the protection of his or her cultural and religious identity is derived, but at the same time it is reaffirmed that, according to the well-established teaching of constitutional jurisprudence, all the fundamental rights protected by the Constitution are in a relationship of mutual integration and it is therefore not possible to identify one of them that has absolute precedence over the others,

since the protection must always be ‘systemic and not split up into a series of uncoordinated norms in potential conflict with each other’ (Corte Cost. no. 264 of 2012), because otherwise there would be an ‘unlimited expansion of one of the rights, which would become a “tyrant” in relation to the other constitutionally recognized and protected legal situations, which constitute, as a whole, an expression of the dignity of the person’ (Constitutional Court no. 85 of 2013, Constitutional Court no. 58 of 2018 and Constitutional Court no. 33 of 2021). And it is therefore mainly from this perspective that this Court has ruled out the applicabilityof a ‘cultural exemption’ in all those cases in which the exercise of the agent’s right to remain faithful to the social rules of his or her own identity group of reference results in the denial of the fundamental goods and rights established by the constitutional system safeguarded by the criminal rules violated”. (para. 4.4.)

Main legal texts quoted in the decision:

- Italian Criminal Code, Art. 600 (Reduction or Maintenance in Slavery or in Servitude)
- Italian Criminal Code, Art. 602 ter (Aggravating Circumstances)

Cases cited in the decision:

- *M. and Others v. Italy and Bulgaria*, Application no. 40020/03, European Court of Human Rights, 31 July 2012.
- Supreme Court of Cassation, Criminal Section III, judgment No. 29613, 29 January 2018.

Commentary

Roma “Bride Price” as the Crime of Enslavement in Italian Courts: A Missed Opportunity for Anthropological

In decision no. 30538 of 13 May 2021, the Italian Supreme Court of Cassation confirmed the conviction for enslavement of a Roma father who accepted the “bride price” on the occasion of the planned marriage of his minor daughter, and

annulled the mitigating cultural defence accorded to him in the second instance.

For the Supreme Court of Cassation, the Roma father's cultural right to practise his own customs concerning marriage rites cannot prevail over the right to personal freedom of his young daughter. Additionally, no mitigating circumstances could be recognized for cultural reasons because the offence was committed against a minor and a direct descendant.

The ruling under consideration reflects a situation that is very common in Italian jurisprudence: the lack of a serious anthropological investigation into the nature of a cultural practice by first and second instance criminal courts (which could draw on anthropological research or other cultural expertise because they deal with the ascertainment of the facts as well as their legal qualification), followed by the affirmation of the so-called "doctrine of insurmountable barrier" by the Supreme Court of Cassation (which, as a court of last instance, is precluded from making any factual findings) – that is, the reliance on abstraction without any actual knowledge of the other culture. According to anthropology, the "bride price" is not equivalent to the sale of a person as described in Art. 600 Italian Criminal Code: it is an essential element of the broader marriage rite, with several cultural functions that express the value, rather than the humiliation, of the woman.

The Supreme Court's approach to cultural diversity is governed by what is known as the "doctrine of the insurmountable barrier". This doctrine, developed by the same Supreme Court of Cassation in 2007 (in the judgment of 26 June 2007, No. 34909, III. Criminal Section, when culture was treated as a custom and not yet as an inviolable right) and since then progressively reaffirmed (e.g., in Supreme Court of Cassation, III. Criminal Section, Judgment No. 29613, 29 January 2018), can be summarized as follows: "cultural rights" are considered inviolable rights of the individual since 2018; before that, culture was treated as a 'custom' rather than a 'right'; nevertheless, like other inviolable rights, they are subject to balancing. In the event of a conflict, cultural rights – according to the Supreme Court – become "recessive" with respect to those fundamental rights protected by criminal norms, as in the case of personal freedom. This doctrine, on the one

hand, certainly represents a more open perspective than previous positions that denied any relevance of the cultural element or simply treated culture as a custom and not a right. However, without an adequate anthropological analysis of the cultural right claimed by the minority, there is a risk of erroneously interpreting the facts, which consequently may alter the balancing of rights. Such an error occurred in the case at stake: the intention of the father and the entire Roma community participating in the rite was not to sell a person. Nobody within the Roma semiotic horizon regards the bride price as a sale.

What limits the scope of this judgment, therefore, is the lack of an in-depth anthropological examination of the practice in the course of the proceedings. This would have allowed the judgment to make a greater contribution to the debate on cultural diversity in Italy and more specifically to the consideration of the problematic relationship between the Roma institution of “bride price” and the Italian penal system.

In the reasoning of the Italian judges, the “bride price”, i.e. the traditional exchange between the groom’s family and the bride’s family, is objectified and isolated from the marriage rite of which it is part, and then superimposed on the description set out in Article 600 of the Italian Penal Code, which condemns “anyone who exercises powers corresponding to the right of ownership over a person”. The judges do not consider it necessary to assess the existence of further dysfunctional elements symptomatic of strong limitations on personal freedom: the exchange of money is sufficient.

According to anthropology, however, the “bride price” is not a tool for buying and selling daughters, but rather a payment with a strong symbolic character, made by the husband and his relatives to the bride’s family in order to obtain their consent to formalize the marriage (a fundamental step in the existence of a Roma individual, and an initiation rite marking the transition from youth to adulthood). The functions performed by the bride price are numerous. It consolidates the new social ties between different families, opens up kinship paths between the bride’s family and the groom’s family, and achieves certain socio-relational goals. Payment, made through valuables, cash, necessities, or luxury goods, has a very

important social value: it serves to demonstrate access to economic resources so as to assure the bride's family that their daughter will be well provided for in her new family (Anderson 2007; Pamporov 2007).

The bride price is a sign of respect for the girl's family and a form of appreciation for the hard work put in to raise her; it is also intended as a form of compensation for the loss of work, both productive and reproductive, that the bride's family suffers when their daughter marries and moves away.

It is important to consider the symbolic value that the "price" may take on in the attentive eyes of relatives and the community, just as it is important to take into account the fact that women may feel proud if the amount received is high and ashamed if the amount received is low compared with the customary expectations.

In Europe, the practice is especially widespread among Roma cultures but exists in several other cultures as well.

For those reasons, the bride price does not in itself seem detrimental to the freedom of the individual, but may be understood as an expression of values also common to the majority culture.

Anthropologists have, in fact, long ceased to denote the practice as "price" and consider it more correct to speak of "bride's wealth" (Evans-Pritchard 1931; Dalton 1966).

The European Court of Human Rights seems to have taken account these considerations. In its judgment in *M and Others v. Italy and Bulgaria* (2012), the Court explicitly declared that it was not possible to identify the ritual in question as a form of exercising powers typical of property over a person, but rather qualified it as a simple exchange of "nuptial gifts", like many others found in the matrimonial traditions of other cultures. The European Court of Human Rights took a clear position on the practice, as is evident from paragraph 161 of the decision: "The Court therefore considers that in relation to the events as established by the authorities, again, there is not sufficient evidence indicating that the first applicant was held in slavery. Even assuming that the applicant's

father received a sum of money in respect of the alleged marriage, the Court is of the view that, in the circumstances of the present case, such a monetary contribution cannot be considered to amount to a price attached to the transfer of ownership, which would bring into play the concept of slavery. The Court reiterates that marriage has deep-rooted social and cultural connotations which may differ largely from one society to another […]. According to the Court, this payment can reasonably be accepted as representing a gift from one family to another, a tradition common to many different cultures in today's society".

The Italian Court of Cassation refers to this ruling in the present case but does not consider it relevant because it concerned a marriage ritual in which the girl's consent was established. In the view of the Court of Cassation, in the present case, the girl's consent was not established, especially since it was the victim herself who reported the facts to the authorities.

However, this observation by the Court of Cassation is debatable: the Court's positions are such that even if consent to the marriage had been established, it would not have changed the outcome. In fact, the Court does not focus on the intention to enslave the daughter by selling her into a marriage without her consent, but on the fact that the material exchange of money, as performed by the father, objectively constitutes a "reification" of the woman, even if carried out in good faith and in deference to a cultural practice.

It would have been useful for the Italian Supreme Court to grasp the broader scope of the European Court of Human Rights decision with regard to the significance of the practice of "bride price". This would have allowed for a more thorough treatment of the conduct at stake, taking into account the fact that the transfer of money in that context was not equivalent to a sale.

In the Italian and international context, Roma culture is not well known and is strongly stereotyped; moreover, the ritual under consideration, having in part been voluntarily abandoned by certain groups, especially under the influence of majority cultures, sometimes represents a mode of cultural expression of a minority within a minority. It is therefore possible that some Roma girls disagree

with the practice and have begun to look at it through the eyes of the majority – that is, as a sale. In other cases, girls wanting to get out of an unhappy marriage may instrumentalize the Italian judicial system: they do not see the “bride price” as a sale, but they denounce their own family knowing that the Italian system will punish this practice.

The rejection of this and similar practices by some Roma women or whole Roma groups is due not only to the cultural influences of the majority, but also to the increasing scope for reflection on gender issues by ethnic Roma activists and scholars. The lack of recognition of the Roma minority by the majority has often hindered this process: when an ethnic group feels attacked from the outside, it tends to become even more entrenched in its own traditions and less inclined to question them in order to prevent the appearance of internal disunity (Eisenberg 2020: 59). Roma feminist groups are often hampered by conflicts that arise with cultural elites within their own groups. As a result, Roma women are often discriminated against by several interacting factors: the attitudes of the majority and the attitudes of their own ethnic minority. They are sometimes asked to choose between culture and gender emancipation. It is precisely in this context that we speak of the “intersectionality” of discrimination (Oprea 2004: 37). To counter this dynamic, greater external recognition of the minority could facilitate the expansion of Roma women’s rights within their own group.

It can be argued, therefore, that the presence of the “bride price” alone, without any further element of subjugation in the marriage, does not seem enough in itself to constitute the crime of enslavement. The absence of the subjective element on the part of the father and the groom or family members who performed the act should also be considered. Furthermore, in a context like Italy, where the Roma lack formal recognition, criminal law punishment does little to further the expansion of Roma women’s rights.

Literature related to the main issue(s) at stake:

Specific legal publications/comments addressing the case

- Motta, V.I. 2022. “Il rapporto tra reati di cui agli artt. 558-bis e 600 c.p. e l’irrilevanza del movente culturale nel delitto di riduzione in schiavitù”. *Cassazione Penale* 1, 204–209, Torino: Giuffré.

General legal literature on the topic that may not be directly connected with the case

- Eisenberg, Avigail. 2020. “Protecting Minority and Majority Cultures in Canada: Risks and Best Practices”. In Luis Efrén Ríos Vega, Ilenia Ruggiu, and Irene Spigno (eds), *Justice and Culture Theory and Practice Concerning the Use of Culture in Courtrooms*, 55–76. Naples: Editoriale Scientifica.

General literature on the topic from other disciplines

- Anderson, Siwan. 2007. “The Economics of Dowry and Brideprice”. *Journal of Economic Perspectives* 21 (4): 151–174.
- Dalton, George. 1966. “‘Bridewealth’ vs. ‘Brideprice’”. *American Anthropologist* 68 (3): 732–738.
- Evans-Pritchard, Edward Evan. 1931. “42. An Alternative Term for ‘Bride-Price’”. *Man* 31: 36–39, available at < https://www.opensourceguinea.org/2013/05/EvansPritchardBrideWealth.html > accessed 15 October 2025.
- Oprea, Alexandra. 2004. “Re-envisioning Social Justice from the Ground Up: Including the Experiences of Romani Women”. *Essex Human Rights Review* 1 (1): 29–39.
- Oprea, Alexandra. 2005. “The Arranged Marriage of Ana Maria Cioaba, Intra-Community Oppression and Romani Feminist Ideals Transcending the ‘Primitive Culture’ Argument, in Roma Women’s Initiative”. *European Journal of Women’s Studies* 12 (2): 133–148.
- Pamporov, Alexey. 2007. “Sold like a Donkey? Bride-price among the Bulgarian Roma”. *Journal of the Royal Anthropological Institute* 13: 471–476.
- Piasere, Leonardo. 2018. *I rom d’Europa. Una storia moderna*. Laterza: Bari-Roma.

- Tosi Cambini, Sabrina. 2015. “Matrimoni romané e interpretazioni gagikané nello spazio pubblico, giuridico e scientifico dei gagé”. *L’Uomo Società Tradizione Sviluppo* 1 (January–June).

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Suggested citation of this case report:

Carta, Silvia; Ruggiu, Ilenia (2026): Roma “Bride Price” as the Crime of Enslavement in Italian Courts: A Missed Opportunity for Anthropological, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI092IT001, https://doi.org/10.48509/CUREDI092IT001.