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## **FORCED MARRIAGES OF CHILDREN AS A FORM OF EXPLOITATION OF HUMAN TRAFFICKING VICTIMS\***

### ***ABSTRACT***

*Forced marriages of children are one of the forms of exploitation in the commission of the crime of trafficking in human beings. Children are treated as a commodity, sold to interested parties for the establishment of a family, while the children, victims of trafficking, are completely deprived of their human (children) rights, their health is impaired, they are deprived of the right to education and denied the development of their personality as well as belonging to their own family. Children who have suffered such a serious crime will cope with extremely serious consequences all of their lives. The first part of the paper covers the concept, scope and causes of this form of exploitation of children and the consequences that children need to cope with. The second part presents the international legal framework relating to the suppression of trafficking in children as well as the documents to guarantee international protection of children and their rights. Furthermore, it points out to the national legislation, principally in the field of criminal law, but also other blanket regulations which ensure the protection of children and their rights. This paper also analyses the collected data on child victims of forced marriage. In concluding remarks, listed are recommendations de lege ferenda in combating exploitation of children for the conclusion of forced and arranged marriages and other forms of exploitation of children.*

**Keywords:** *Child trafficking, forced marriages, arranged marriages, children's rights*

### **1. INTRODUCTION**

Forced marriages of children are increasingly common form of exploitation of human trafficking victims. It is the exploitation of a child in a way that the child is forced into a marriage with an adult or another child. This form of exploitation is expressed in many, both developed and developing nations, while the victims tend to be children of socially vulnerable groups and minorities. In our region this kind of exploitation affects a large number of members of the Roma community, the victims are both boys and girls, although there is a significantly larger number of

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girls victims of forced marriages. At the international level, documents have been passed to combat this form of trafficking in persons and in accordance with them the signatory states harmonize their national legislation, however, even despite that forced marriages of children remain a global problem. With harmonized national legal framework, it is necessary and relevant for the authorities to promptly respond and in every possible and allowed way protect the children that are being exploited in such an inhuman way. Children, victims of forced marriage, are doomed to early parenthood, deprived of education, with completely destroyed possibility of further development, suffering enormous consequences for their entire lives. Given that this problem is largely present, it requires continuous and thorough work with the aim of effective prevention and suppression.

In order to counteract and prevent a serious violation of children's rights, each state where there is an increased practice of entering children into marriage in certain minority communities must develop successful programs to combat the problem within the community in order to *a priori* protect any potential child from the suffering and exploitation because the child's life must come first.

## 2. FORCED MARRIAGES OF CHILDREN

Marriage is a legally regulated community of woman and man<sup>1</sup> based on the free will of a man and a woman to get married, the equality of spouses and on mutual respect and mutual support. Child marriage is defined as a formal or customary union in which one or both parties are under the age of eighteen.<sup>2</sup> Marriage can not be concluded by a person who has not reached eighteen years of age, exceptionally court may in non-contentious proceedings allow a marriage to the person who has attained the age of sixteen years if it finds the person to be mentally and physically ready for marriage and that the marriage is in accordance with the well-being of the person.<sup>3</sup>

When we talk about marriages of children, we meet with different terminology. *Early marriage* means a community of two people who according to their age do not meet the legal requirements in order to be married or community where only one of the future spouses does not meet these requirements. To a person who

<sup>1</sup> Art.12., Family law, Official Gazette No.103/2015

<sup>2</sup> European Roma and Travellers Forum & Romani Women Informal Platform „Phenjalipe”, *Making early marriage in Roma communities a global concern*, available at: URL=<https://cs.coe.int/team20/cahrom/7th%20cahrom%20plenary%20meeting/item%2004%20-%20ertf%20and%20phenjalipe%20joint%20paper%20making%20early%20marriage%20in%20roma%20communities%20a%20global%20concern.pdf>. Accessed 20 February 2017.

<sup>3</sup> Art.25. *op.cit.* note 1.

does not meet the age requirements for marriage, a child, consent must be given by another person, usually their parent or legal guardian. Therefore, the person for whom the consent is being given, is still considered a child, and here we are talking about child marriage. Therefore, early marriage is also the *child marriage*. Furthermore, given that the child is a person who is not yet 18 years old,<sup>4</sup> he/she is a minor, so there arises the concept of *underage marriages*.

Forced child marriages are illegal because they do not meet the legal requirements for a community that can be considered a marriage and are forced because in their conclusion there is no consent of the will. Child marriage can be a *contracted marriage* that is planned, negotiated and contracted for the children by their parents or other people who care for them or persons under whose auspices they are currently residing.

According to data published by the International Center for Research on Women (ICRW), in the developing world, one third of girls are married before the age of 18, while in 2012, 70 million women 20-24 around the world had been married before the age of 18.<sup>5</sup> If this trend continues, within the next ten years, 150 million girls will be married before their 18th birthday, which is on average 15 million girls each year.<sup>6</sup> Victims of forced marriages are prevented and deprived from all guaranteed rights, the right to freedom and dignity, the right to free movement, the right to make decisions and choices, the right to life, work and education, the right to choose one's own family and the right to health.

Poverty, lack of education, illiteracy, domestic violence, are factors that create fertile ground for the development of this form of criminal exploitation of children. Girls, victims of forced marriages, suffer greater psychological effects than boys in particular for reasons of impairment of their reproductive health. Lack of physical maturity and the unwillingness of the body for pregnancy can lead to death of girls, and according to available data, more than 50,000 girls aged 15-19 die each year during pregnancy or from the effects of pregnancy.<sup>7</sup>

It is difficult to predict how many children are living in forced marriage and consensual unions, while it is impossible to determine their age limit. Most child marriages are concluded in the countries of South Asia and Africa. The highest

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<sup>4</sup> Art. 4. par. 6. A child is a person under the age of eighteen years; The Social Welfare Act, Official Gazette No.157/2013, 152/2014, 99/2015, 52/2016, 16/2017.

<sup>5</sup> Data available at: URL=<http://www.icrw.org/child-marriage-facts-and-figures/>. Accessed 20 February 2017.

<sup>6</sup> *Ibid.*

<sup>7</sup> More in: *Early marriage child spouses*, available at: URL=<https://www.unicef-irc.org/publications/pdf/digest7e.pdf>. Accessed 20 February 2017.

rate of child marriages is recorded in Bangladesh where 66% of young women are married before the age of 18, while 32% enter into marriage before the age of 15.<sup>8</sup> The average age for marriage for girls and boys in Nepal is 6-8 years.<sup>9</sup>

Some communities justify the entry of children into marriage for traditional and economic reasons, facilitating the life and survival of the family, returning certain debts of one family to another, as well as pre-arranged and promised marriage between the specific future bride and groom. No tradition of a nation can be a justification or have justification for acts that destroy a young life, for acts that are contrary to the constitutionally guaranteed human rights. First of all, considering that the entry of children into marriage under 16 years of age is not allowed in most states and is a crime to cohabit with a child under 16 years old,<sup>10</sup> therefore, the customary law of a certain community, according to which a child under the age of 16 years of age may enter into marriage, should not be approved, but on the contrary, such behavior must be punished.

### 3. INTERNATIONAL LEGAL FRAMEWORK

The first and fundamental international document<sup>11</sup> that protects the rights of the child was the Geneva Declaration on the Rights of the Child of 1924, adopted by the League of Nations<sup>12</sup> which regulated the protection of a child from all forms of exploitation. The Declaration guarantees the right of the child to physical and spiritual development, the right to food, health care and social protection and the right to help in trouble. UN's Universal Declaration of Human Rights,<sup>13</sup> adopted and proclaimed by General Assembly Resolution 217 A (III) on December 10, 1948 ensures for children the right to freedom and equality by birth, the right to equality before the law and judicial protection and prohibits slavery,<sup>14</sup> torture or

<sup>8</sup> According to the report of UNICEF, 01/2013, op.cit. note 2. p.8.

<sup>9</sup> *The Sad Hidden Plight of Child Grooms*, available at: URL=<http://www.thedailybeast.com/articles/2014/09/18/the-sad-hidden-plaint-of-child-grooms.html>. Accessed 20 February 2017.

<sup>10</sup> Enabling common-law lives with a child, Art. 170. Criminal code RC, Official Gazette No. 125/2011, 144/2012, 56/2015, 61/2015

<sup>11</sup> See also: Božić V, *Combating sexual exploitation as the leading form of trafficking in persons in the function of protection of the right to life and fundamental human rights*, *Pravni život*, 2016, 583 1-780; pp.267-288

<sup>12</sup> More in: Ćubelić I, *Rights of children in international documents*, *Church in the World*, Vol. 29 No.4 December 1994, pp. 453-459, available at: URL=<http://hrcak.srce.hr/file/80329>. Accessed 20 February 2017.

<sup>13</sup> Universal Declaration of Human Rights, available at: URL= [http://www.pariter.hr/wp-content/uploads/2014/10/opca\\_deklaracija\\_o\\_ljudskim-pravima.pdf](http://www.pariter.hr/wp-content/uploads/2014/10/opca_deklaracija_o_ljudskim-pravima.pdf). Accessed 20 February 2017.

<sup>14</sup> Art. 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. *Ibid.*

humiliation. The Universal Declaration explicitly states that marriage may be entered into only with the free and full consent of the intending spouses.<sup>15</sup> UN General Assembly in 1954 adopted the Resolution 843 (Status of women in private law: customs, ancient laws and practices affecting the human dignity of women) ordering the abolition of old customs and to ensure freedom in the choice of a spouse, the elimination of child marriages and the practice of betrothal of girls before puberty age.<sup>16</sup>

UN adopted the 1956 Supplement to the Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery,<sup>17</sup> stipulating the right of women to freely enter into marriage and calling on states to clearly define a minimum age for marriage as well as to prescribe penalties for violation of applicable provisions and to take all measures to combat child exploitation. At the United Nations General Assembly in 1959 adopted was the Declaration on the Rights of the Child<sup>18</sup> in order to protect the position of children in the world and the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages<sup>19</sup> with the aim of extra protection and security of the child. Under the Convention, no marriage is legitimate unless there is full and free consent of both parties while the State Party are once again called upon to determine the legal minimum age for marriage.

The Convention on the Elimination of All Forms of Discrimination against Women was adopted in 1979 and stipulates that engagement and the entry of a child into a marriage shall have no legal effect, and all necessary actions shall be taken, including legislation, to specify a minimum age for marriage, as well as to introduce the obligation of registration of marriages in an official registry.<sup>20</sup>

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<sup>15</sup> Art.16.par.2. *Ibid.*

<sup>16</sup> Resolution 843, available at URL=[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/843](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/843) (IX). Accessed 20 February 2017.

<sup>17</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956, available at: URL=<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolition-OfSlavery.aspx>. Accessed 20 February 2017.

<sup>18</sup> Declaration of the Rights of the Child, 1959, available at: URL=<http://www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/>. Accessed 20 February 2017.

<sup>19</sup> Convention on Consent to Marriage, Minimum Age for Marriage and Registration of marriages of 10 December 1962 - (Decision on the publication of multilateral treaties to which Croatia is a party on the basis of notifications of succession, OG-MU 012/1993), Available at: URL=<http://digured.srce.hr/arhiva/263/33320/www.hidra.hr/hidrarad/pobirac-upload/murh/000217.pdf>. Accessed 20 February 2017.

<sup>20</sup> Art.16.par.2. Convention on the Elimination of All Forms of Discrimination against Women, available at: URL=<http://www.unmikonline.org/regulations/unmikgazette/05bosniak/BConElimination-DiscriminationWomen.pdf>. Accessed 20 February 2017.

The UN General Assembly adopted the 1989 Convention on the Rights of the Child,<sup>21</sup> which represents the essential international document in the field of children's rights. Convention has been ratified by almost all countries of the world, and in the Republic of Croatia it has been in force since October 8, 1991. The most significant provisions relate to the shared responsibility of parents, the best interests of the child, free primary education for children, prohibiting the abuse of children, labor,<sup>22</sup> sexual and other exploitation. The States Parties to the Convention commit themselves to take all appropriate national, bilateral and multilateral measures to prevent the abduction, sale and trafficking of children for any purpose and in any form.<sup>23</sup> Each State Party to the Convention is obliged to submit regular and additional reports on the state of children's rights. It is important to mention the Beijing Declaration and Platform for Action of 1995<sup>24</sup> concerning the protection of women's rights, according to which States parties are invited to provide in their national legislation provisions to ensure that marriage is only entered into with the free and full consent of the intending spouses, and to prescribe the minimum legal age of consent and the minimum age for marriage and to raise the minimum age for marriage where necessary.<sup>25</sup>

Council of Europe Resolution 1468 on forced and child marriages<sup>26</sup> adopted in 2005 calls on the Member States to prescribe 18 years as the lower age for marriage. Furthermore, the resolution calls on the State parties to criminalize forced marriages in their national criminal legislation.

Istanbul Convention, Council of Europe Convention on preventing and combating violence against women and domestic violence,<sup>27</sup> the most far-reaching international treaty that requires states parties to criminalize or otherwise penalize domestic violence (physical, sexual, psychological or economic violence), stalking,

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<sup>21</sup> Convention on the Rights of the Child, available at: URL=[http://www.azoo.hr/images/AZOO/Ravnatelj/radni\\_matgerijali/Konvencija\\_o\\_pravima\\_djeteta.pdf](http://www.azoo.hr/images/AZOO/Ravnatelj/radni_matgerijali/Konvencija_o_pravima_djeteta.pdf). Accessed 20 February 2017.

<sup>22</sup> See more: Božić V, *Labor exploitation as the most common form of the crime of trafficking in human beings in spite of the state border control and the labor market*, Collection of Papers, Faculty of Law Niš, 2016, pp. 335-352.

<sup>23</sup> Art.35. *op.cit.* note 21.

<sup>24</sup> Beijing Declaration and Platform for Action, URL=[http://www.e-jednakost.org.rs/kurs/kurs/download/pekingska\\_deklaracija.pdf](http://www.e-jednakost.org.rs/kurs/kurs/download/pekingska_deklaracija.pdf)[https://ravnopravnost.gov.hr/UserDocsImages/arhiva/images/pdf/Izvj%C5%A1%C4%87e%20Republike%20Hrvatske%20UNECE-u%20o%20provedbi%20Pekin%C5%A1ke%20deklaracije%20i%20Platforme%20za%20djelovanje%20\(Peking%2015\).pdf](https://ravnopravnost.gov.hr/UserDocsImages/arhiva/images/pdf/Izvj%C5%A1%C4%87e%20Republike%20Hrvatske%20UNECE-u%20o%20provedbi%20Pekin%C5%A1ke%20deklaracije%20i%20Platforme%20za%20djelovanje%20(Peking%2015).pdf). Accessed 20 February 2017.

<sup>25</sup> Art.234. par.e. *Ibid.*

<sup>26</sup> Resolution 1468 (2005) Forced marriages and child marriages, available at: URL=<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17380&lang=en>. Accessed 20 February 2017.

<sup>27</sup> URL=<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046fc87>. Accessed 20 February 2017.

sexual violence (rape, sexual harassment, forced marriage,<sup>28</sup> female genital mutilation, forced abortion and forced sterilization).

Croatia has ratified the UN Convention against Transnational Organized Crime and III of the Protocols that supplement the Convention.<sup>29</sup> The first protocol, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, is significant in the field of human trafficking and defines the concept of trafficking. The protocol deals with various forms of exploitation, both within and outside the country and does not differ particularly for men and women but speaks about persons.<sup>30</sup>

Republic of Croatia adopted the Law on Ratification of the Council of Europe Convention on Action Against Trafficking in Human Beings on 27 June 2007.<sup>31</sup> The Convention was adopted with the intention to reinforce and develop the standards contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,<sup>32</sup> and defines trafficking in persons as a violation of criminal law and as a violation of fundamental human rights.<sup>33</sup>

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<sup>28</sup> Article 32 – Civil consequences of forced marriages

Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.

Article 37 – Forced marriage

(1) Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.

(2) Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.

Article 59 – Residence status

(4) Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

<sup>29</sup> Law on Ratification of UN CATOC, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Protocol against the Smuggling of Migrants by Land, Sea and Air, Official Gazette IA No. 14/2002,13/2003,11/2004.

<sup>30</sup> More: Holmes P, *Fight Against Trafficking in Persons for the Western Balkans Region: Manual for Training of Special Investigators*, International Organization for Migration, Zagreb, 2007.

<sup>31</sup> Law on Ratification of the Council of Europe Convention on Action Against Trafficking in Human Beings Official Gazette IA No.07/2007

<sup>32</sup> Art. 39. Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe Treaty Series - No. 197.

<sup>33</sup> More: Božić V, *Trafficking in human organs as a form of organized crime*, PhD Dissertation, University of Zagreb, Faculty of Law, 2012.

See also: Derenčinović D, *Not for sale - on the rights of victims of trafficking after the European Court of Human Rights ruling in the case Rantsev against Cyprus and Russia*, Almanac of Academy of Legal Sciences of Croatia No.1, 2010.

Directive 2011/36 / EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting victims of human trafficking, which replaces the EU Council Framework Decision on Combating Trafficking in Persons from 19 July 2002 (2002/629 / JHA), was adopted on 05 April 2011.<sup>34</sup> The Directive provides for stronger sanctioning of the crime of trafficking in persons and the seizure of illegally acquired assets from convicted persons for the crime of trafficking in persons.

In addition to the aforementioned legal framework, institutional framework relating to the fight against child marriages is also necessary, among which we can highlight the UN Children's Fund (UNICEF),<sup>35</sup> UN Population Fund (UNFPA),<sup>36</sup> the Committee on the Rights of the Child (CRC)<sup>37</sup> with 18 experts in the field protection of children's rights, then the Commission on the Status of Women (CSW), Committee on the Elimination of Discrimination Against Women (CEDAW)<sup>38</sup> with 23 independent experts who monitor the implementation of the Convention on the Elimination of all Forms of Discrimination Against Women. It is necessary to mention the World Health Organization (WHO)<sup>39</sup> that cares about the health of vulnerable groups, children and women.

It should be noted that there is quite a large number of organizations that are globally engaged in the protection of children, namely: Breakthrough, CARE, Humanium: Help the Children, Defence for Children International, Save the Children and Girls not Brides.<sup>40</sup>

#### 4. NATIONAL LEGISLATION OF CROATIA

Republic of Croatia has aligned its national legislation with international instruments concerning the protection of the rights of the child to enter into marriage. Family Law stipulates an age limit of 18 years of age as the assumption of legal age for marriage, with the exception, according to which the court may in non-contentious proceedings allow marriage to a person who has attained the age of sixteen years if he/she is found to be mentally and physically ready for marriage

<sup>34</sup> 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

<sup>35</sup> See: URL=<https://www.unicef.org/>.

<sup>36</sup> See: URL=<http://www.unfpa.org/child-marriage>.

<sup>37</sup> See: URL=<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>.

<sup>38</sup> See: URL=<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx>.

<sup>39</sup> See: URL=<http://www.who.int/en/>.

<sup>40</sup> More in: Aleksić M, NVO Atina: *Child Marriages in Serbia*, Belgrade, 2015.



and that this marriage is in according to the well-being of the person.<sup>41</sup> Accordingly, the minimum age for marriage with the consent of the court in Republic of Croatia is 16 years.

Taking into account that a man and a woman by getting married are taking upon themselves a great responsibility and in accordance with the Convention on the Rights of the Child, according to which a child means every human being below 18 years should not be allowed to get married to persons before they gain full maturity. Furthermore, young girls by early marriage and early childbearing are exposed to possible health problems; they remain deprived of education and accordingly are condemned to economic dependence on another person, the spouse. One should consider, in accordance with the recommendations of the Committee for the elimination of discrimination against women that the minimum lower limit for marriage without exceptions should be prescribed to 18 years and to undertake activities that will inform the public about the negative impacts and consequences that an early marriage leaves on a minor and violates their human rights, especially those concerning health and education.

The Criminal Code of Croatia prescribes sanctions relating to the protection of children from coercion and illegal entry into marriage. According to the criminal law a child is a person under the age of eighteen years.<sup>42</sup> Forcing another person to enter into marriage is a new criminal offense in line with Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, punishable by imprisonment of six months to five years.<sup>43</sup> The reason to criminalize this aggravated criminal offense of coercion lies in preventive combating of forced marriages, which in some communities are still ingrained. Recruitment of a person to another country with the aim of forcing the marriage in that country is punishable by imprisonment of up to three years.<sup>44</sup>

An adult who does no other crime but only lives with a child under the age of sixteen, as well as a person who enables a child under sixteen years of age to cohabit with another person or leads a child to do so, and thus does not make any other criminal offense for which a more severe punishment is prescribed, commits an offense of *Enabling Extramarital Life With a Child* which carries a prison sentence

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<sup>41</sup> Art.25. *Op. cit.* note 1.

<sup>42</sup> Art.87. par.7. CC Republic of Croatia

<sup>43</sup> Art.169. par.1 *Ibid.*

<sup>44</sup> Par.2. *Ibid.*

of up to three years.<sup>45</sup> If the crime was committed out of personal gain it is an aggravated form that is punishable by imprisonment from six months to five years.<sup>46</sup>

Forced marriages are criminalized by crime of *Trafficking in Human Beings* as a form of exploitation. Imprisonment for 1 to 10 years shall be inflicted on everyone who recruits, transports, transfers, harbors or receives a child, or exchanges or transfers control of a child with an aim of concluding an unauthorized or forced marriage.<sup>47</sup> Trafficking in children with the use of force or threat, deception, fraud, kidnapping, abuse of power or difficult position or relationship addiction, giving or receiving financial compensation or benefits to achieve the consent of a person having control over a child to conclude an unauthorized or forced marriage is an aggravated form punishable by a sentenced from three to fifteen years.<sup>48</sup>

It is important to note that the act of marriage with a child is a form of exploitation, and it is not necessary to determine whether the child was abused in a marriage or not.

## 5. RESEARCH AND ANALYSIS OF CHILDREN AS VICTIMS OF FORCED MARRIAGES

Behind the large number of child marriages lies trafficking. Forced marriages are increasingly expanding every day, and we can only surmise their dark figure. The most affected are communities where there are traditional customs of early entry into marriage as is the case in the Roma population.

Main characteristics of forced child marriages are the following:

- 1- The child has no right to choose his or her spouse and has no right to refuse it
- 2- The child for the imposed spouse usually gets a much older partner
- 3- The child is exposed to coercion, threats and abuse so that he/she does not leave the spouse
- 4- Physical abuse and violence is carried out against a child
- 5- The child is restricted in movement and imposed various other restrictions

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<sup>45</sup> Art.170. par.1. i 2. *Ibid.*

<sup>46</sup> Par. 3. *Ibid.*

<sup>47</sup> Art. 106. par.2. *Ibid.*

<sup>48</sup> Par.3. *Ibid.*

- 6- The girl in a forced marriage is not entitled to a free choice about whether to have children
- 7-- Forced marriage realizes an exchange of economic goods over which the forced spouse has no control.

In Bosnia and Herzegovina in 2014 identified was a total of 49 potential victims of human trafficking with the purpose of labor exploitation, sexual exploitation and for the purpose of organized and forced begging and selling with the aim of concluding contractual or forced marriages as well as for the production, possession and viewing of child pornography. For the purpose of forced marriage and subsequent begging registered were 4 minor victims.<sup>49</sup> In Bosnia and Herzegovina children are to a large percentage exposed to human trafficking, particularly for forced begging and entering into forced marriages or child abuse via the Internet.<sup>50</sup>

Economically vulnerable Roma children were in 2016 subjected to forced begging and domestic servitude against their will in forced marriages.<sup>51</sup>

In 2015 in Croatia identified were 38 victims of human trafficking (35 citizens of the Republic of Croatia, 2 citizens of Bosnia and Herzegovina and one citizen of Hungary). In comparison to 2014 registered was an increase in the total number of victims, however, significantly reduced was the number of identified minor victims of trafficking in 2015 (4 minor victims was identified). In a large number of cases these are the so-called cases of “internal” trafficking in persons, but there are documented cases of Croatian citizens who are victims of trafficking within the EU.<sup>52</sup>

The Criminal Code, which entered into force on 1 January 2013 has brought an important innovation in criminalizing the offense of human trafficking. Former Art.175. “Trafficking in human beings and slavery”<sup>53</sup> is now regulated through two articles, Art.105. “Slavery” and Art. 106. “Trafficking in human beings.” As forms of exploitation of human trafficking in the new CC incriminated are the

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<sup>49</sup> Report on the state of human trafficking in Bosnia and Herzegovina in 2014, National Coordinator for Combating Trafficking in Human Beings, Sarajevo, April/March 2015, URL=[http://msb.gov.ba/PDF/IZVJESTAJ\\_trgovin\\_%20izvjestaj\\_2014.pdf](http://msb.gov.ba/PDF/IZVJESTAJ_trgovin_%20izvjestaj_2014.pdf), Accessed 20 February 2017.

<sup>50</sup> *Ibid.*

<sup>51</sup> Report on human trafficking in 2016, Bosnia and Herzegovina - Nivo 2, available at: URL=[http://photos.state.gov/libraries/sarajevo/30982/pdfs/2016%20TIP%20REPORT\\_BOS.pdf](http://photos.state.gov/libraries/sarajevo/30982/pdfs/2016%20TIP%20REPORT_BOS.pdf). Accessed 20 February 2017.

<sup>52</sup> More: Office for Human Rights and National Minorities: Report on the implementation of the National Plan to Combat Trafficking in Human Beings for the period from 2012 to 2015, for 2015.

<sup>53</sup> Criminal code RC 97, Official Gazette No. 110/1997,129/2000, 51/2000, 111/2003, 105/2004, 84/2005, 71/2006, 110/2007, 152/2008

conclusion of unauthorized or forced marriage and the use of persons in armed conflicts.

In the Republic of Serbia, we are mostly talking about children marriages contracted between adults and juveniles, mostly girls. The table below under number 2 shows the criminal charges for forced marriage.

**Table 1.** Criminal charges for forced marriage<sup>54</sup>

Year	No. of charges
2009	5
2010	4
2011	2
2012	2
Total	13

Indicators by which we can recognize a child as a potential victim of human trafficking are as follows:

- Injuries that look like the result of a physical attack,
- Signs of neglect and child abuse,
- Signs that they are subject to control of movement,
- They have no persons with which to socialize,
- They are not entered in the register of births,
- They are illegally adopted,
- They do not attend school,
- They do not have time to play, are aggressive, exhibit behavioral problems
- Constantly changing testimony,
- Are exposed to violence or threats of violence to them or their families,
- Exploited for begging, prostitution, street work,
- Poorly or not paid at all for work for working overtime,
- Falsely representing themselves in order not to reveal their status,
- They do not have personal documents,

<sup>54</sup> Morača T, Galonja A, Jovanović S, Milanović L, *Local communities in the fight against human trafficking*, Beograd, 2013, URL=<http://www.atina.org.rs/sites/default/files/Local%20communities%20publikacija.pdf>. Accessed 20 February 2017

- They reside and work in the place and at the time inappropriate for the age of the child,
- Pregnancy and child abortion,
- They are found in a location that is known or is connected with trafficking,
- They do not know the language,
- They do not know their work or home address,
- In their presence instead of them someone else is talking,
- They live in poor and inhuman conditions,
- They have no health care,
- Without the right to communicate with their family and loved ones,
- They depend on third persons,
- They are in the presence of adults who are not family members or are caught alone on the street without an adult,
- They have contact with people from the criminal milieu,
- They show great resourcefulness that is not expected of the average child,
- They act and speak as per the instructions received,
- They have traumatic reactions,
- They live in a common-law marriage or forced marriage,
- They're frightened and show fear,
- They are traveling without adults or people who are not their parents,
- Very often change residence,
- As foreign nationals they have no resolved status,
- They are dressed inappropriately for age or weather conditions,
- They show signs of addiction to drugs or alcohol, and similar.

As can be seen from Table 2, most girls married between the ages of 15-19 years have been recorded in Dem. Rep. of Congo (74%), in second place was Nigeria (70%), and in third the Congo (56%). As for the boys in the same age situation is slightly different. Considerably fewer is married (1/4) compared to girls (3.4). The highest number of married are in Iraq (15%), followed by Nepal (14%) and Tsonga (12%).

**Table 2:** Percentage of minors aged 15-19 that are married<sup>55</sup>

<b>Married Adolescents: Percentage of 15-19 year-olds married</b>		
	boys	girls
Dem. Rep. Of Congo	5	74
Niger	4	70
Congo	12	56
Uganda	11	50
Mali	5	50
Afghanistan	9	54
Bangladesh	5	51
Nepal	14	42
Iraq	15	28
Syria	4	25
Yemen	5	24
Honduras	7	30
Cuba	7	29
Guatemala	8	24

In 2015, the FMU handled cases involving 67 ‘focus’ countries which a victim was at risk of, or had already, been taken to in connection with a forced marriage, the five highest volume countries in 2015 were: Pakistan - 539 cases (44%), Bangladesh - 89 cases (7%), India - 75 cases (6%), Somalia - 34 cases (3%), Afghanistan - 21 cases (2%).<sup>56</sup>

According to research conducted, which includes representatives of social welfare centers, institutions responsible for the issues of trafficking and non-governmental organizations, the questions which are the possible indicators that the minor is the victim of human trafficking and what are the reasons why it has become a victim, obtained the answers presented in tables 3 and 4.

<sup>55</sup> Source: UN Population Division, Department of Economic and Social Affairs, World Marriage Patterns 2000, URL=<http://www.un.org/esa/population/publications/worldmarriage/worldmarriagepatterns2000.pdf>. Accessed 20 February 2017.

<sup>56</sup> Forced Marriage Unit Statistics 2015 8 March 2016, URL=[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/505827/Forced\\_Marriage\\_Unit\\_statistics\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505827/Forced_Marriage_Unit_statistics_2015.pdf). Accessed 20 February 2017.

**Table 3:** Indicators suggesting that a minor is the victim of human trafficking

	<b>Indicators suggesting that a minor is the victim of human trafficking</b>	<b>%</b>
1	Injuries caused by violence	29
2	Children caught alone on the street without an adult	35
3	Frightened, neglected, abandoned children	49
4	Children not entered in the register of births	15
5	Children outside the education and health systems	35
6	Denied rights of the child exploitation	29
7	Residing and working in the place and at the time inappropriate for the age of the child Pregnancy and child abortion	55
8	Children are not playing with other children, showing behavior disorders	29
9	Statement and recognition of victims	15
10	Other	15

Stay and work in the place and at the time inappropriate for the age of the child, pregnancy and abortion, and frightened, neglected, abandoned children are the most important indicators that the minor is a victim of human trafficking.

**Table 4:** Reasons for which the minor has become a victim of human trafficking

	<b>Reasons for which the minor has become a victim of human trafficking</b>	<b>%</b>
1	High degree of poverty	55
2	Child neglect	49
3	Misguidance	15
4	Threat, coercion or duress	49
5	Kidnapping	15
6	Customs and traditions	70

The number one reasons why the minor had become a victim of trafficking, according to the survey, are the customs and traditions and high degree of poverty.

## **6. CONCLUSION**

Forced marriages of children leave huge consequences on the physical and mental development of the child. The practice of early marriage, approval of parents, low education, economic dependence as well as any other reason can not and must not be an excuse for entering a child into marriage nor the life of a child out of wed-

lock. Children are not able to cope with the problems and responsibilities that include marriage, they are expected to take responsibility for their decisions, which they are not able to do. They are still children in need of parental care, and should not themselves become and be parents. Worrying is a situation where parents give their approval to a minor child to enter into marriage, and not to talk about situations where parents are the ones that lead their child into marriage. Accordingly, it is proposed *de lege ferenda* to introduce legislation under which a marriage can be entered into only with people over 18 years.

With early, forced child marriages, children's basic rights to their own choice of partner have been violated, the right to development and education, right to health, the right to free will in connection with the decision about having children and various other restrictions have been imposed on them.

Of great importance is scientific research and media coverage of the public through prevention campaigns to raise public awareness of the problem of trafficking, especially trafficking of children, as an aggravated form of the crime. Of significance is the comprehensive research in the Region on all forms of trafficking in persons, their distribution and causes. It is necessary to continuously work on the methods of identification of victims in relation to all forms of trade and modes of selection and finding the victims. Particular attention should be paid to the activities of the detection of criminal offenses of organized crime related to trafficking in persons, organized by forcing children to beg and the conclusion of forced marriages. Regional and international cooperation is crucial in the detection of criminal offenses in the area of combating trafficking in persons and victim identification.

Finally, the state must clearly define the institution of child marriage as a totally unacceptable and harmful category. Consequently, we should act preventively and take account of particular risk groups and categories to separate the concept of child marriage from any ethnic or religious community.



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Jean Monnet International Scientific Conference

PROCEDURAL  
ASPECTS OF  
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Editors:  
Dunja Duić  
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