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Child marriages - yesterday, today, tomorrow?

ABSTRACT: Child marriage is a formal or informal union involving a child or person under the age of 18. It is currently associated with violations of human rights, particularly the rights of children. The consequences of child marriage are long-term and relate to gender equality, health, and education, among others. Therefore, efforts are being made in national and international jurisdictions to eliminate harmful (traditional) practices. While individual countries have raised the marriageable age to 18, many still allow exceptions. Slovenia is one such example. In this article, the author analyzes the approach to the abolition of child marriage at the international and comparative law levels and is particularly critical of the current Slovenian regime.

KEYWORDS: marriageable age, early marriage, education, health, poverty.

1. Introduction

Until approximately the 20th century, child or early marriages were very common and thus strongly embedded in particular societies. Child marriage was justified by lower average life expectancy, which meant that children entered the reproductive phase more quickly. However, since premarital relations were not socially acceptable, early marriage was, as it also allowed for a faster means of reproduction. Girls were usually married as soon as they reached puberty, often even earlier.¹ In the 20th century, people began to realize the vulnerability that children could be exposed to through child marriage. Thus, fundamental shifts and actions were initiated to protect children, as a vulnerable social group, by all effective and appropriate

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¹ Sen Nag, 2017.

measures against traditional practices that are harmful to their health. Child marriage undoubtedly represents one such harmful practice.²

This article analyzes the international instruments that form one of the fundamental pillars of the human rights system in the fight against child marriages. This article also provides an overview of the current context of child marriage in selected regions (e.g., Africa). Although child marriage is still prevalent in Africa and Asia, that it is also possible under Slovenian law cannot be ignored. Therefore, an analysis of the current legal regulations in Slovenia and the possibility of abolishing child marriage in line with the United Nations 2030 Global Sustainable Development Goals (SDGs), both globally and in Slovenia specifically, are presented.

The term “child marriage” describes a formal or informal partnership in which one or both spouses are minors.³ The term “early marriage” is often used synonymously with “child marriage,” but there is a crucial difference. Early marriage involves persons under the age of 18 who, although they have reached the age of majority or acquired full legal capacity before the age of 18 by entering into a formal marriage, are still under the age of 18 in terms of chronological age.⁴ Early marriage is also defined as a marriage contracted in a country where the age of majority is reached earlier, thus enabling the marriage to be legally entered. Early marriage, and hence child marriage, is also recognized under Slovenian law (see Chapter 3.1.). For the purposes of this article, the common term “child marriage” is used to refer to all such case.

A “forced marriage”⁵ is any marriage entered into without the full and free consent of at least one of the spouses. “Forced marriage” is a form of

² “Harmful traditional practices” that are detrimental to children's health and also sought to be eliminated include female genital mutilation, scarification, corporal punishment, honor killing, using children in forced begging, bonded labor and sexual slavery, accusing children of witchcraft, forced feeding, stoning, virginity testing, and breast ironing, among others (see United Nations, 2016, pp. 23-32).

³ Ahmed, 2015, p. 8.

⁴ United Nations – General Assembly, 2014, p. 3; Beker, 2019, p. 23.

⁵ Forced marriage as gender-based violence is also mentioned in the following directives: (a) Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (*OJ L 315, 14.11.2012, pp. 57–73*) – para. (17); (b) 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 (*OJ L 101, 15.4.2011, pp. 1–11*) – para. (11); (c) Council Directive 2003/86/EC of 22 September

domestic violence, since it violates the right to decide whether, when, and whom to marry freely.⁶ Forced marriage also refers to a marriage in which one or both spouses cannot terminate or leave because of coercion or strong social or family pressures.⁷ Forced marriage is more broadly defined than child marriage, as an adult can also be forced to marry. In many cases of child marriage, marriages are also forced, and in some cases, the child cannot consent to marriage. Marriage can also be contracted against a child's will. Child marriages are also often "arranged marriages," planned for the child by parents or other persons who care for the child. However, arranged marriages are not only for children but can also take place for adults.⁸

Children are often too young when they enter a marriage and thus are neither physically fit for the "tasks" ahead (e.g., childbirth, household work, etc.) nor intellectually mature enough to understand the meaning and consequences of marriage. They are also often exposed to domestic violence, rape, abuse, and exploitation, among others. There is no doubt that child marriage violates children's rights and is a source of various abuses, which often leave children with long-term physical and emotional consequences that they may suffer from throughout their lives.

2. International approaches to addressing child marriage

In the 20th century, the legal requirement for consent to marriage found its way into the most important international human rights instruments, seeking to eradicate it. These international instruments delegate to States Parties the responsibility to take appropriate measures to protect children from child

2003 on the right to family reunification. (*OJ L 251, 3.10.2003, pp. 12–18*) – see Art. 4 para. (5): 'In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.'; (d) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (*OJ L 337, 20.12.2011, pp. 9–26*), which does not explicitly mention forced marriage, although it is certainly possible to classify forced marriage as an act of persecution if the conditions provided in Art. 9 are met.

⁶ FRA, 2014, p. 3.

⁷ United Nations – General Assembly, 2014, p. 4.

⁸ Aleksić, 2015, p. 18; Narat et al., 2014, p. 23.

marriage. Specifically, the eradication was to be achieved by defining a minimum age at marriage and requiring free and full consent.

In 1948, the Universal Declaration of Human Rights⁹ (hereinafter, UDHR) recognized the right to free and full consent to marriage for both intending spouses (Article 16 paragraph (2) of UDHR). Article 16 paragraph (1) also clarifies that men and women of full age have the right to marry and to found a family without any limitation of race, nationality, or religion, and they are entitled to equal rights to marriage, during marriage, and at its dissolution. Therefore, an appeal was sent to the States Parties to raise the age of marriage to the age of majority. In most countries, the age of majority also means that a person is sufficiently mature to make an informed decision about entering into marriage. It should be noted that the age of majority does not preclude a forced or arranged marriage.

In addition, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) binds States Parties in Article 2:

...the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.¹⁰

In 1962, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage was adopted.¹¹ According to Article 1 paragraph (1), marriage should not be legally entered into without both parties' full and free consent, and consent must be given in person, after due publicity, and in the presence of an authority competent to solemnize the marriage and witnesses, as provided by law. Moreover, Article 2 requires States Parties to take legislative measures to establish a minimum age for marriage. Those who have not yet reached the minimum age shall not

⁹ United Nations (no date).

¹⁰ *OHCHR Supplementary Convention on the Abolition of Slavery*. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/supplementary-convention-abolition-slavery-slave-trade-and> (Accessed: 5 January 2023).

¹¹ *OHCHR Convention on Consent to Marriage*. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-consent-marriage-minimum-age-marriage-and> (Accessed: 5 January 2023).

lawfully marry unless the competent authority has granted dispensation from the minimum age limit for serious reasons, and in the interests of the intending spouses.¹²

In 1966, the International Covenant on Civil and Political Rights¹³ (hereinafter, ICCPR) and the International Covenant on Economic, Social, and Cultural Rights¹⁴ (hereinafter, ICESCR) were adopted. Both of them refer to the right to marry. Article 23 paragraph (2) of the ICCPR recognizes the right to marry equally for men and women when they are of marriageable age, and that marriage may only be contracted with the free and full consent of both intending spouses (Article 23 paragraph (3) ICCPR and Article 10 paragraph (1) ICESCR). The ICESCR is silent on the minimum age; however, as child marriages are often arranged or forced, Article 10 can also be used to prevent child marriages.

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women¹⁵ (hereinafter, CEDAW) contains provisions that directly and indirectly oblige states to prohibit child marriage. Article 2 requires States Parties to pursue appropriate measures to eliminate and prohibit all forms of discrimination against women, explicitly obliging states to eliminate customs and practices against women.¹⁶ Based on equality between men and women, States Parties are to ensure the equal right of women to marry, to choose a spouse freely, and to marry of their own free will and with their full consent (Article 16 paragraph (1) point (b)

¹² *OHCHR Convention on Consent to Marriage*. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-consent-marriage-minimum-age-marriage-and> (Accessed: 5 January 2023).

¹³ *International Covenant on Civil and Political Rights*: Uradni list RS, 35/92 – MP, 9/92; Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Accessed: 5 January 2023).

¹⁴ *International Covenant on Economic, Social, and Cultural Rights*: Uradni list RS, 35/92 – MP, 9/92; Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (Accessed: 5 January 2023).

¹⁵ *Convention on the Elimination of All Forms of Discrimination Against Women*: Uradni list RS – MP, 9/92; Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (Accessed: 5 January 2023).

¹⁶ In Indonesia, the practice of “merarik” has been greatly reduced due to the involvement of religious and village leaders in media campaigns. “Meriarik” involves kidnapping a girl if the girl's parents do not agree to the marriage or if the bride price or dowry is too high and is also often used to kidnap girls for sexual slavery and trafficking (United Nations – General Assembly, 2014, p. 11).

CEDAW). Article 16 paragraph (2) of the CEDAW addresses child marriage directly, stating that the betrothal or marriage of a child has no legal effect. However, necessary measures, including legislative measures, should be taken to establish a minimum age for marriage and make it compulsory to register the marriage officially. CEDAW arises from the need for a holistic approach to early marriage, and all the implications of such practices, from the restriction of personal freedom to its impact on health and education, must be considered.¹⁷

In 1989, the Convention on the Rights of the Child¹⁸ (hereinafter, CRC) was adopted; however, it does not explicitly mention child marriage. Nevertheless, it is possible to draw protection from four of its fundamental principles: non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, development, and protection (Article 6); and the right to be heard (Article 12). Specifically, Article 24 paragraph (3) of the CRC explicitly obliges States Parties to abolish traditional practices harmful to children's health by all effective and appropriate measures. The UN Special Rapporteur “on the sale of children, child prostitution, and child pornography” states that child marriages may be considered as the sale of children for the purpose of sexual exploitation, which is contrary to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography¹⁹ and Article 35 of the CRC.²⁰

Article 23 paragraph (1) of the Convention on the Rights of Persons with Disabilities²¹ also peripherally addresses the issue of child marriages, requiring States Parties to take effective and appropriate measures to ensure the right of all persons (including children) with disabilities of marriageable age to marry and found a family based on the free and full consent of the intending spouses.

¹⁷ UNICEF, 2001, p. 3.

¹⁸ *Convention on the Rights of the Child*: Uradni list RS – MP, 9/92. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (Accessed: 5 January 2023).

¹⁹ *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. Available at: <https://childrens-rights.digital/hintergrund/index.cfm/topic.280/key.1617> (Accessed: 8 May 2023).

²⁰ United Nations – General Assembly, 2014, p. 5.

²¹ *Convention on the Rights of Persons with Disabilities*: Uradni list RS, št. 37/08; Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> (Accessed: 7 January 2023).

Moreover, regional charters also address the issue of child marriages. The African Charter on the Rights and Welfare of the Child²² (hereinafter, ACRWC), a regional international treaty adopted in 1990, explicitly prohibits child marriage and the betrothal of girls and boys. Article 21 paragraph (2) states that effective actions (including legislative action) should be taken to set the minimum age of marriage at 18 years and to ensure compulsory registration of all marriages in an official registry. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women²³ (2003) provides that States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. Specifically, Article 6(a-b) indicates that States shall enact appropriate national legislative measures to guarantee that no marriage occurs without the free and full consent of both parties, and that the minimum age of marriage for women is 18 years. The ASEAN Declaration on Human Rights²⁴, an Asian regional instrument, also provides in Article 19 that a man and a woman of full age have the right to marry based on their free and full consent.

Article 9²⁵ of the Charter of Fundamental Rights of the EU²⁶ (hereinafter, CFREU) refers to national rules on the right to marry.²⁷ Such regulations are reflected in Article 12 of the European Convention on Human Rights²⁸ (hereinafter, ECHR), according to which the right to marry is subject to national laws governing its exercise. Although national laws govern marriage, this critically does not mean that the conditions for

²² *African Charter on the Rights and Welfare of the Child*, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force, 29 November 1999; Available at: <http://hrlibrary.umn.edu/africa/afchild.htm> (Accessed: 5 January 2023).

²³ *OHCHR Protocol on the Rights of Women*. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ProtocolontheRighthsofWomen.pdf> (Accessed: 5 January 2023).

²⁴ *ASEAN Human Rights Declaration*. Available at: <https://asean.org/asean-human-rights-declaration/> (Accessed: 5 January 2023).

²⁵ See Article 9 of the CFREU (right to marry and right to found a family): '*The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.*'

²⁶ *Charter of Fundamental Rights of the EU*: Uradni list 2010/C 83/02.

²⁷ In Case C-230/21, 17 November 2022, the CJEU wrote that the fact that underage girls are married can mean that they are exposed to a serious form of violence, such as child marriage and forced marriage.

²⁸ *European Convention on Human Rights*: Uradni list RS – MP, št. 7/94; Available at: https://www.echr.coe.int/documents/convention_eng.pdf (Accessed: 5 January 2023).

exercising this right are entirely within the competence of State authorities.²⁹ In *R. and F. v. United Kingdom*, the European Court of Human Rights (hereinafter, ECtHR) judged:

The matter of conditions for marriage in national law cannot, however, be left entirely to the Contracting States as being within their margin of appreciation. This would be tantamount to finding that the range of options open to a Contracting State included an effective bar on any exercise of the right to marry...Any limitations introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired.³⁰

The ECtHR also referred to the issue of child marriage in the matter of *Janis Khan v. the United Kingdom*, holding that

...marriage cannot be considered simply as a form of expression of thought, conscience or religion...The obligation to respect the legal marriageable age does not constitute a denial of the right to marry, even if the individual's religion permits marriage at a younger age.³¹

The ECtHR also addressed the issue of child marriage in *Z. H. and R. H. v. Switzerland*³². In that case, the applicants applied for asylum in Switzerland as a married couple, having contracted their marriage in a religious ceremony in another country when the first applicant was 18 years old and the second was 14 years old. Swiss authorities found that the applicants' religious marriage was invalid under their national law due to the young age of the second applicant, which was incompatible with Swiss public policy. The ECtHR held that neither Article 8 nor Article 12 of the ECHR could be interpreted as imposing an obligation on any Contracting State to recognize a marriage, religious or otherwise, contracted by a 14-year-old child.³³

²⁹ Draghici, 2015, p. 1.

³⁰ *R. and F. v. United Kingdom* App. No. 35748/05, 28 November 2006.

³¹ *Janis Khan v. the United Kingdom* App. No. 11579/85, 7 July 1986.

³² *Z.H. in R.H. v Switzerland* App. No. 60119/12, 8 March 2016.

³³ *Z.H. in R.H. v Switzerland* App. No. 60119/12, 8 March 2016, Art. 44.

The 2011 Istanbul Convention on preventing and combating violence against women and domestic violence³⁴ expands on this notion, by defining the term 'woman' as including girls under 18 (Article 3 point (f)). Article 37 of the Istanbul Convention³⁵ appeals to States Parties to take the necessary legislative or other measures to ensure that the intentional act of forcing an adult or child to marry is made a criminal offense. Moreover, State Parties are encouraged to take the necessary legislative or other measures to criminalize the intentional act of luring an adult or child into the territory of a Party or State other than their residence, with the intent to force them into marriage.³⁶ Slovenia, as a State Party to the Istanbul Convention, enacted such a legislation in 2015, adding Article 132a to the Criminal Code³⁷, which regulates forced marriage or the establishment of a similar union.

3. National approaches

In 2017 and 2018, the European Parliament adopted the “Resolution of 4 October 2017 on ending child marriage”³⁸ (hereinafter, Resolution 2017) and “Resolution of 4 July 2018 Towards an EU external strategy against early and forced marriages—next steps”³⁹ (hereinafter, Resolution 2018). Both resolutions appeal to EU Member States that still allow marriages under the age of 18 (for example, with parental consent) to set 18 as the minimum age for marriage. The two resolutions stress that child, early, and forced marriages must be treated as severe violations of children's human

³⁴ *Istanbul Convention on preventing and combating violence against women and domestic violence*: Uradni list RS – MP, 1/15; Available at: <https://rm.coe.int/168008482e> (Accessed: 8 May 2023).

³⁵ *Istanbul Convention on preventing and combating violence against women and domestic violence*.

³⁶ Council of Europe: *Convention on Preventing and Combating Violence against Women (Istanbul Convention)*, p. 4. Available at: <https://rm.coe.int/children-rights-and-the-istanbul-conventionweb-a5/1680925830> (Accessed: 14 January 2023).

³⁷ *Criminal Code*: Uradni list RS, št. 50/12 – official consolidated version, 6/16 – popr., 54/15, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21, 105/22 – ZZNŠPP.

³⁸ *Resolution of 4 October 2017 on ending child marriage*. Available at: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0379_EN.html (Accessed: 20 January 2023).

³⁹ *Resolution of 4 July 2018 Towards an EU external strategy against early and forced marriages—next steps*. Available at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0292_EN.html (Accessed: 20 January 2023).

rights and fundamental freedoms,⁴⁰ and that such marriages also constitute violence against women and children. National legislation should address these violations proportionately and effectively (Resolution 2018, para. (6)).⁴¹

The EU countries are unanimous regarding the legal age for marriage (marriageable age, German Ehemündigkeit, French nubilité, and Spanish nubilidad), set at 18 years. However, most EU Member States still allow marriage at a younger age. Thus, differences between countries exist regarding the lower age of marriage and who must consent (e.g., parents or courts).

Regarding the minimum age of 18, Belgium, Denmark, Finland, France, Germany, Ireland, the Netherlands, Sweden, and Finland do not allow for any exceptions. However, countries that regulate the possibility of marriage under the age of 18 differ. Some countries set the age of marriage to 15 (Slovenia, Estonia, Lithuania) or 16 (Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Hungary, Italy, Latvia, Malta, Poland, Portugal, Romania, Slovakia, Spain, Romania). Most EU countries that allow marriage before the age of 18 provide for an exception in the form of consent granted by a court (e.g., Slovenia, Croatia, Bulgaria, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Luxembourg, Malta, Poland, Slovenia, Bulgaria, Cyprus, Estonia, Hungary, Luxembourg, Malta, and Poland), while Austria, Cyprus, and Romania allow marriage with parental consent.

3.1. How does Slovenia approach child marriage?

Precise data on the marriages of minors from the Statistical Office of the Republic of Slovenia (SORS) are not available because the lower limit for data collection is set at 19 years (i.e., under 20); however, it is encouraging that the number of such marriages has fallen sharply in all cases (groom, bride, or both) from 1995 to 2021. The most significant decline was observed in marriages involving brides aged 15–19 years.

⁴⁰ In particular, violations of the right to freedom of expression with regard to consent to marriage, the right to integrity and to physical and mental health, the right to education, the right to equality, the right to autonomy and physical integrity, and freedom from exploitation and discrimination.

⁴¹ Among the actors that are particularly active in working to end child marriage are “Girls Not Brides: The “Global Partnership to End Child Marriage,” the “Child Marriage Research to Action Network” (CRANK) and the “Child Marriage Monitoring Mechanism”– (see Chalasani, 2021, p. S6).

Table 1: Number of marriages before the age of twenty⁴²

	1995	2000	2010	2015	2021
Groom	48	31	28	20	12
Bride	538	220	138	92	62
Both	23	22	16	9	5

Article 24 paragraph (1) of the Slovenian Family Code⁴³ (hereinafter, FC) provides that a child cannot enter into marriage. A child is defined according to Article 5 of the FC, as a person who has not yet reached the age of 18, unless they have acquired the full capacity to contract. Thus, 18 years is accepted as the general legal limit for separating a child from an adult, and the onset of adulthood is linked to an objective criterion (chronological age). Upon reaching the age of majority (18 years), a person is legally presumed to have the full capacity to contract and thus to understand the meaning and consequences of marriage. However, Article 24 paragraph (2) of the FC provides for a so-called “overlooking minority” (in Slovene *sprebled mladoletnosti*). For justified reasons, the court may authorize the celebration of a marriage by a child who has already reached the age of 15. The child should have attained such physical and mental maturity that they are capable of understanding the meaning and consequences of the rights and obligations arising from marriage. In a non-contentious civil procedure, the court may decide to overlook the minority of one or both intending spouses and allow marriage to occur if the following conditions are cumulatively fulfilled:

- a) minimum age;
- b) justified reasons;
- c) physical and mental maturity ability to understand the meaning and the consequences of the rights and obligations arising from marriage.

⁴² Statistical data obtained from SORS (Statistical office of the Republic of Slovenia) [Online]. Available at: <https://pxweb.stat.si/SiStatData/pxweb/sl/Data/-/05M1016S.px> (Accessed: 6 January 2023).

⁴³ *Family Code* (Slovene: *Družinski zakonik*): Uradni list RS, št. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C, 200/20 – ZOOMTVI, 94/22 – odl. US, 94/22 – odl. US, 5/23.

3.1. *Minimum age*

Setting a chronological age of marriage (18) should protect children from unwanted marriages and their consequences. The court will place significant focus on the assessment of the child's physical and mental development, nevertheless, as chronological age is simply a starting point. Thus, under the Non-Contentious Civil Procedure Act⁴⁴ (hereinafter, NCCPA-1), a court may allow a child over the age of fifteen to marry if the other three conditions from the Article 24 of the FC are met.

When the new FC was adopted in 2017, Slovenia did not immediately define 18 as the age of marriage, without the possible exception currently provided for in the FC. This is especially since Slovenia belongs to a minority of countries with the lower age limit of 15 (Estonia and Lithuania). Other countries have a limit of 16.

3.1.2. Justified reasons

The presence of justified reasons must be satisfied before a court will allow a minor (who is older than 15 years) to get married. It is expected that in each individual case, there must be several coexisting reasons (e.g., maturity of the minor, pregnancy, retreat to a safer environment, or domestic violence). The non-contentious court will evaluate all the relevant reasons that could justify granting permission for marriage. In this regard, Article 24 paragraph (2) of the FC does not define the term “justified reasons”. Thus, “justified reasons” constitutes a legal standard that the non-contentious court must satisfy on a case-by-case basis, and the subjective and objective circumstances of each individual case guides the court. For example, the court will evaluate the minor's views, wishes, expectations, maturity, motives, and arguments relevant to marriage. The choice of an intending spouse can also be a critical circumstance that assists the court in understanding the minor's personality.⁴⁵ The court may also consider possible pregnancy or domestic violence. Under Article 7 of the NCCPA-1, which refers to the “principle of ex officio investigation,” the court must also establish facts not alleged by the parties to the proceedings for the child's marriage and take evidence not offered by the parties. Moreover, according to Article 6 paragraph (2) of the NCCPA-1, the non-contentious

⁴⁴ *Non-Contentious Civil Procedure Act (Zakon o nepravdnem postopku)*: Uradni list RS, št. 16/19.

⁴⁵ Alinčić et al, 2007, p. 39.

court must, of its own motion, take all measures to protect the rights and legal interests of the child.

3.1.3. Physical and mental maturity to understand the meaning and consequences of the rights and obligations arising from marriage

There is a legal presumption of maturity at the age of 18, which relates only to the child's mental maturity. At 18, the child acquires the full capacity to contract and legal emancipation occurs, at which point the general age for marriage is also reached. However, when a child under 18 but over 15 wishes to marry, attaining both physical and mental maturity is examined by the court in a non-contentious civil procedure.⁴⁶

One particular feature is the verification of physical maturity, which is not a condition for the existence of a general capacity to contract. As marriage may also be linked to pregnancy and the resulting parenthood⁴⁷, the minor's short- and long-term well-being must undoubtedly be evaluated. Thus, under Article 29 of the FC, the non-contentious court must obtain the opinion of the social work center.

The court also examines whether the minor who wishes to enter into marriage has mental maturity enabling them to understand the meaning and consequences of the rights and obligations arising from marriage (Article 24 paragraph (2) of FC). If the court finds that the minor has the capacity to understand, they will be lawfully able to give informed and free consent to the celebration of marriage.⁴⁸

3.1.4. Court's decision

The procedure for overlooking the minority must be initiated by a child's application who has already reached the age of fifteen and wishes to enter marriage (Article 76 paragraph (1) of NCCPA-1). The court then determines whether the conditions for overlooking the minority, as prescribed in Article 24 of the FC, are fulfilled. If the court finds that the conditions are fulfilled, the child's minority will be overlooked and permission to marry will be granted. Therefore, granting permission means that the legal restrictions,

⁴⁶ Kraljić, 2019, p. 95.

⁴⁷ Novak, 2017, p. 57.

⁴⁸ Baxter, 2019, p. 76.

constituting the conditions for marriage, have been lifted, and the marriage is valid.⁴⁹ Upon entering marriage, the minor will acquire the full capacity to contract, constituting a milestone between childhood and adulthood. Therefore, if a child enters into marriage before the age of 18, they are no longer considered a child in legal terms.

The court's permission applies only to marriage with the person named in the decision as the minor's intending spouse. The court's decision (with permission) cannot be used for any other eventual marriage before the age of majority, as the permission results from the specific circumstance individually evaluated by the court.⁵⁰

However, if the court finds that the conditions for overlooking minority are not met, marriage permission will not be granted, and any marriage entered into by a child without the court's permission is void. However, it may remain valid if the court before which the annulment proceedings are pending finds that circumstances would allow the marriage to be accepted, or if the child has reached the age of 18 during the proceedings (Article 52 of the FC).

To guarantee the best interests of the child, the FC provides several safeguards for the child who wishes to marry before the age of 18, and thus legal certainty, as follows:

- a) A civil servant of the administrative unit must warn the applicants of the conditions that must be fulfilled for the marriage to be valid (Article 30 paragraph (2) of the FC);
- b) A social work center shall give an opinion on the entering of marriage of a minor (Article 29 of the DC in conjunction with Article 79 of the NCCPA-1).
- c) A court must decide on whether to overlook the minority (Article 24(2) of the FC);
- d) A registrar, before whom the marriage shall be solemnized, must first verify the identity of the intending spouses (Article 37 paragraph (1) and Article 39 paragraph (1) of the FC).

⁴⁹ Kraljić et al., 2022, p. 325.

⁵⁰ Kraljić et al., 2022, p. 338.

4. The impact of child marriage on a child's life

4.1 General

Child marriage has been actively addressed internationally for many years; however, a ban on child marriage means little for at risk children, if it is not transposed into national law and enforced by national courts.⁵¹ Child marriage is not only a violation of the right to free and full consent to marriage, but also a violation of other children's rights (e.g., the right to education, freedom of expression, protection from all forms of abuse, and protection from harmful traditional practices).

Though most countries today set the age of marriage to 18, some countries (Equatorial Guinea, Gambia, Saudi Arabia, Somalia, South Sudan, and Yemen) do not set an age of marriage at all.⁵² In 2014, 147 countries allowed children under the age of 18 to marry, either with parental consent, court permission, or by following cultural practices or religious laws. Of the 147 countries, 54 allowed girls to marry at a younger age than boys.⁵³

Specific regions in Africa and Asia that are strongly affected by child marriage typically face high poverty and mortality rates, low levels of education, increased maternal morbidity, and lower life expectancy.⁵⁴ Most child marriages occur in Sub-Saharan Africa⁵⁵ and South Asia⁵⁶; however, they are also present in parts of Latin America and pockets of Eastern Europe.⁵⁷ However, child marriages, especially among girls, also occur in high-income countries. In a study conducted in the United States, approximately 1% of the 15-17 year-olds surveyed were married.⁵⁸

⁵¹ Ebobrah and Eboibi, 2017, p. 334.

⁵² Gray, 2016.

⁵³ United Nations – General Assembly, 2014, p. 14.

⁵⁴ Ahmed, 2015, p. 8.

⁵⁵ In Sub-Saharan Africa, the Republic of Congo ranks first with 74% of girls (only 5% of boys) marrying before the age of 18. This is followed by Niger (70% girls; 5% boys), Congo (56% girls; 12% boys), Uganda (50% girls; 11% boys), and Mali (50% girls; 5% boys) UNICEF, 2001, p. 4; Ahmed, 2015, p. 9; Deane, 2021, p. 2; Efevbera and Bhabha, 2020, p. 1548.

⁵⁶ In Ethiopia and in some parts of West Africa, marriage at seven or eight years is not uncommon. In Kebbi State, (Northern Nigeria) the average age of marriage for girls is just over eleven years, against a national average of 17. It could also be that many young brides are second or third wives in polygamous households; UNICEF, 2002, p. 4.

⁵⁷ UNICEF, 2001, p. 4.

⁵⁸ See Koski and Heymann, 2018, p. 59 ff.

Although the global prevalence of child marriage has declined⁵⁹, the fight against child marriage has repeatedly been influenced by crisis. In times of crisis, the needs of adolescent girls and child marriages are often overlooked, which often leads to an increase in child marriages. This has already occurred during the Ebola outbreak,⁶⁰ And the COVID-19 pandemic has further contributed to the increase in poverty in some regions of the world. Consequently, the number of child marriages is expected to increase in the coming years. This is particularly problematic for countries that experience extremely high rates of child marriages. In some countries, the onset of the COVID-19 pandemic has led to the closure of safe houses that provided at least some protection for girls at risk of various forms of violence (e.g., in Niger, Congo, Uganda, and Kenya).⁶¹ Furthermore, in times of conflict and natural disasters, parents may marry off their daughters as a last resort to ensure the family's income in times of economic crisis. In food-insecure Kenya, these girls are called “famine brides.” In Sri Lanka, Indonesia, and India, young girls married “tsunami widowers” to obtain government subsidies to marry and start a family. During the wars in Sudan, Liberia, and Uganda, girls were abducted and delivered to warlords as “bush wives,” or even offered by their families in exchange for protection.⁶²

Countries where early or child marriage persists also have poor Millennium Development Goals (MDG) indicators. Although significant strides have been made in some countries and regions to reduce child marriage (e.g., South Asia), no region has eliminated it as a form of harmful traditional practice until today. For example, due to the extremely rapid population growth in sub-Saharan Africa, the number of child marriages is expected to rise.⁶³

4.2. Consequences for children

Both young boys and girls have been subject to child marriages, with far-reaching long-term consequences for children. Child marriages involving only one marriage partner below the age of 18, usually the female, are also very common. The frequency of child marriages involving girls below 18

⁵⁹ The last decade has seen a worldwide decline in child marriage. While a decade ago one in four girls (25%) was married before the age of 18, today the number is approximately one in five (20%); UNICEF, 2018, p. 3.

⁶⁰ See Deane, 2021, p. 10 ff.

⁶¹ UNICEF, 2021, p. 5.

⁶² UNFPA, 2012, p. 12.

⁶³ UNICEF, 2018, p. 4.

has always been higher than those involving boys⁶⁴ and is often the result of entrenched gender inequality. As a result, the global prevalence of child marriage among boys is one-sixth of that among girls. The consequences for boys are reflected in their poor preparation for specific responsibilities, such as caring for the family, early fatherhood, and a lack of access to education and career opportunities.⁶⁵

As discussed earlier, child marriage is particularly prevalent in the poorest regions or countries; therefore, poverty is often one of the reasons for early or child marriages. Marrying a daughter can mean having one less person to feed, clothe, or educate. In some cultures, there is a bride price, and the bride's parents receive payment at the time of marriage, which they can use for other children, the family, or even their own needs. Younger girls receive a higher bride price because they have more years to bear children.⁶⁶ Therefore, early marriage is often seen as a means to reduce the financial burden on parents and as a source of income.⁶⁷

Girls who marry before the age of 18 are more likely to experience domestic violence and are less likely to attend school, often dropping out of school altogether after marriage. This results in illiteracy and lower educational attainment, and thus, a lack of future opportunities for both personal and professional development.⁶⁸

There are also health-related consequences, which for girls include not only mental health problems but also adverse health effects due to early (teenage) pregnancy and childbirth. Pregnant girls aged 15-19 are twice as likely to die in childbirth as those aged 20-30, and girls under 15 are five to seven times more likely to die during childbirth or to have a stillbirth. This is due to physical immaturity, where the girls' pelvis and birth canal are not yet fully developed.⁶⁹ Girls and women victims of child, early, and forced marriages often cannot make decisions about their sexual and reproductive health or lack accurate information about it. This compromises their ability to make decisions about the number and spacing of their children and to negotiate the use of contraceptives, putting them at greater risk of contracting sexually transmitted diseases and HIV.⁷⁰ Moreover, due to

⁶⁴ Sen Nag, 2017.

⁶⁵ UNICEF, 2022.

⁶⁶ Bish, 2021.

⁶⁷ Deane, 2021, p. 7.

⁶⁸ Aleksić, 2015, p. 18.

⁶⁹ Ahmed, 2015, p. 9; UNICEF, 2022.

⁷⁰ United Nations – General Assembly, 2014, p. 9.

prolonged and/or obstructed labor, many girls become victims of morbidities, such as obstetric fistula, with girls who give birth before the age of 15 having an 88% risk of developing a fistula. Patients with fistula are usually young girls from socially disadvantaged groups with poor access to emergency obstetric care. Girls can also face incontinence or fecal discharge, emitting a foul odor and making them social outcasts.⁷¹

In addition to these health problems, research in the United States has shown that girls who marry before the age of 18 are at higher risk of mental health problems (e.g., suicidality) and substance abuse (e.g., smoking, drugs, alcohol, and pills) later in life.⁷²

Finally, child marriage deprives children of their childhood, who, despite their youth and physical and mental immaturity, are thrust into the adult world. Girls are usually married to men much older than them, which also undermines their autonomy because of the age difference. They must take on household and family tasks that they cannot match, exposing them to misunderstandings from their partners and families, and thus to further physical, psychological, economic, and sexual violence. Moreover, they are often subjected to social isolation, completely cut-off from their biological families.⁷³ As child marriage affects a girl's health, future, and family, it also has significant economic costs at the national level, with major implications for development and prosperity.⁷⁴

5. Final thoughts

Although Slovenia has also acceded to international treaties that directly or indirectly address child marriage and its abolition, it is still among the countries where child marriage is possible. Despite the safeguards built into national legislation to protect children and their interests and well-being in the event of marriage before the age of 18, it cannot be ignored that Slovenia has not followed international treaties in its regulations. Slovenia's regulations are also not in line with the SDGs, which call for global action to eliminate this violation of human rights by 2030; however, this target remains a few years away. Thus, Slovenia has the opportunity to amend its regulations to ensure that the child's rights are respected in this area as well.

⁷¹ Ahmed, 2015, p. 9; UNICEF, 2022.

⁷² Koski and Heymann, 2018, p. 59.

⁷³ Deane, 2021, p. 7.

⁷⁴ UNICEF, 2022.

The UN's Committee against Torture has recognized that child marriage can constitute cruel, inhuman, or degrading treatment, especially when governments have not set a minimum age of marriage in line with international standards.⁷⁵ From this point of view, we can also conclude that the Slovenian FC is not in line with international standards.

Countries that allow child marriage should aim to raise the age of marriage to 18 for girls and boys without exception; moving away from gender-based discrimination in this respect. In so doing, it should be understood that child marriage cannot be justified on traditional, religious, cultural, or economic grounds.⁷⁶ Education plays an important role in the elimination of child marriages and can significantly contribute to improving a person's future personal and professional capabilities and autonomy. Therefore, if a minor is already married, efforts should be made to encourage further education.

Building on the SDGs, there is strong global interest in ending child marriages by 2030; however, it is difficult to believe that child marriages will be entirely eliminated by 2030. Notably, despite existing international treaties that bind the contracting states and domestic legislation on this topic, child marriage remains a problem in many countries. Of course, there are still countries that are a long way from the goals promoted in the SDG agenda. Legislative changes to make 18 the minimum age for marriage, with no exceptions, is perhaps only a first step. It is also necessary to ensure that people, communities, and even countries are made aware that child marriage violates human rights and, particularly, the child's rights. Something as deeply rooted in certain societies as child marriage, must be approached much more broadly and at a legislative level. There is a need to change people's mindsets, which sometimes means intervening in deeply-rooted traditional customs and rituals, contributing to the high number of child marriages. Child marriage is often linked to religion or even seen, in certain contexts, as the only way for girls and women to live or survive. Slovenia, as a state party to all major international human rights treaties, especially the CRC, does not, in principle, face such (traditional) problems. Thus, amending the FC, and thus raising the age of marriage to 18 without exception, should not be too big a step to take. In any case, raising the age of marriage would be a significant step forward in achieving SDG 5.3 and to guarantee and respect human rights, particularly those of the child.

⁷⁵ United Nations – General Assembly, 2014, p. 5.

⁷⁶ United Nations – General Assembly, 2014, p. 6.

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