

# Child Marriage in Hungary with Regard to the European Context and the Requirements of the CRC\*\*

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## I Introduction

The aim of the paper is to provide an overview of the regulation of child marriage in Hungary, also with regard to its legal historical context. In Hungary, the marriage of underage persons does not occur very often, which may lead one to question the importance of this issue at all. As only few Hungarian children marry, either with another child over 16 or with an adult, the justification of the legal and social phenomenon of child marriage has only been queried recently. The doubts about child marriage and the adequacy of its legal consequences, among others the fact that a married child over 16 becomes of legal age, has become apparent from the perspective of children's rights, which seem to have been strengthened in the course of the last decade. The sweep of children's rights, which is a remarkable but in practice not too rapid movement, is why I think that it is inevitably necessary to reveal some documentary cornerstones of children's rights in the international and European context, and especially some main requirements of the UN Convention on the Rights of the Child (CRC). I shed light on some statistical data concerning child marriage with the aim of providing a deeper perspective of child marriage and give some examples of pertinent regulations in some European countries, which may prove that the issue of child marriage is not 'settled' and constant but it is changing slowly. If it is admitted that to let children marry does not serve their real interests (as, among others, this is not a suitable way of providing them a higher standard of living), it can be easier to overcome some romantic beliefs about underage persons' serious legal commitment. In the summary of the paper, I mention the fact that the CRC uses the standard of 'evolving capacities of the child' but it cannot be recited in a way that would be detrimental for the child.

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## II Statistical Background – the Current State of the Problem also in Hungary

Child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age.<sup>1</sup> According to the data 12 million girls are married before the age of 18 each year which means 23 girls every minute.<sup>2</sup> (When child marriage is discussed not only formal marriage but also informal marriage is taken into consideration. However, I focus primarily on formal marriage, as formal marriage and informal marriage – cohabitation – can be distinguished in the European countries better than in other, non-European legal systems.) The numbers and data are mind-bending, as 1 in 5 girls in the world are said to be married before 18 and over 650 million women alive today were married as children.<sup>3</sup> The problem is a global one, as child marriage occurs all over the world even if it happens more often in some regions such as North Africa, South Asia and the Middle East.

In Hungary, child marriage is not such a huge and complex problem as in the above-mentioned regions, but it clearly occurs in Hungary as well and it is contrary to the requirements of the UN Convention on the Rights of the Child (CRC) of 1989. The incidence of married girls aged 15–17 was 0.24 % of all girls between 15 and 17 in 2016, according to the data of the Hungarian Central Statistical Office.<sup>4</sup> It seems to show a downward trend, as this rate was 0.31 % in 2010.<sup>5</sup> I have to add that children above 16 may only enter into a valid marriage if it is authorised by the guardianship authority. We have no data on the rate of cohabitants among children, which fact cannot be detached from the fact that the age when anybody may cohabit with another person in a legally recognisable way is not defined in the Hungarian Civil Code (HCC), namely Act V of 2013.<sup>6</sup> The topicality of this issue is confirmed by the latest concluding observations of the Committee on the Rights of the Child. The concluding observations on the sixth periodic report on Hungary, which were adopted by the Committee at its eighty-third session (20 January – 7 February 2020), urged that the Hungarian Civil Code should be amended ‘to eliminate any exception to the minimum age of marriage of 18 years for girls and boys.’<sup>7</sup>

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<sup>1</sup> Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, UN Committee on the Elimination of Discrimination against Women and Convention on the Rights of the Child, 2014.

<sup>2</sup> Source of the data is UNICEF. These are published by a partnership, Girls Not Brides. <<https://www.girlsnotbrides.org/about-child-marriage>> accessed 27 March 2019.

<sup>3</sup> See <<https://www.girlsnotbrides.org/about-child-marriage>> accessed 27 March 2019.

<sup>4</sup> 0.24% on 1 January 2016; <[http://www.ksh.hu/sdg/cel\\_05.html?lang=hu](http://www.ksh.hu/sdg/cel_05.html?lang=hu)> accessed 16 February 2020.

<sup>5</sup> 0.31% on 1 January 2010, 0.28 % on 1st January 2011 and 0.26% on 1st January 2015; <[http://www.ksh.hu/sdg/cel\\_05.html?lang=hu](http://www.ksh.hu/sdg/cel_05.html?lang=hu)> accessed 16 February 2020.

<sup>6</sup> The definition of cohabitation is contained in Art 6:514(1) of HCC.

<sup>7</sup> See <[https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/HUN/CRC\\_C\\_HUN\\_CO\\_6\\_41507\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/HUN/CRC_C_HUN_CO_6_41507_E.pdf)> accessed 16 February 2020.

### III Child Marriage Internationally and in the European Context – Facts and Documents on Human Rights

Child marriage affects all children regardless of gender but boys are affected to a lesser degree than girls.<sup>8</sup> The main causes of child marriage are gender inequality, tradition, poverty and insecurity. Poor families think that they can secure their children's future with marriage and also marriage will bring safety into the life of their child, as she will be saved from the risk of harassment and physical or sexual assault.<sup>9</sup> Child marriage's impacts are tremendous. Married children regularly finish their education, as these girls are expected to be mothers and wives although they are not mature enough to perform these roles. Their health is endangered among others by the early pregnancy and its consequences and most of them face a high risk of remaining poor.<sup>10</sup>

Although in Europe we do not face child marriage as often as in some other regions of the world, the national legislations typically let children – even if not very young children – to marry. The problem of child marriage has come into the foreground in Europe for two reasons, namely the rise in the standards of children's rights' and the fact that the European population has been changing and the proportion of the population among the members of which child marriage happens has been growing.<sup>11</sup>

When studying the human rights' conventions, both on the international and European level, the fact has to be borne in mind that a child marriage is often at the same time a forced marriage, as children do not enter into it freely. The CRC declares clearly that, for the purposes of this convention, a child means every human being below the age of eighteen years.<sup>12</sup> Although the second part of this sentence allows that the child may attain majority earlier under the law applicable to the child, Article 3 has to be emphasised, according to which in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. From the children's rights' perspective child marriage primarily cannot be in the child's best interests.

According to Art 16 of the UN Convention on Human Rights (1948), men and women of full age have the right to marry and to found a family and marriage shall be entered into only with the free and full consent of the intending spouses. The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) urged that no marriage should be legally entered into by any person under this age. The requirement of marrying at a 'marriageable age' and the prohibition of forced marriage – no marriage shall be entered into without the free and full consent of the intending spouses – is repeated in Art 23 of the International Covenant on Civil and Political Rights (1967) and partly also in Art 10 of

<sup>8</sup> See <<https://data.unicef.org/topic/child-protection/child-marriage>> accessed 27 March 2019.

<sup>9</sup> See <<https://www.girlsnotbrides.org/why-does-it-happen>> accessed 27 March 2019.

<sup>10</sup> See <<https://www.girlsnotbrides.org/what-is-the-impact>> accessed 27 March 2019.

<sup>11</sup> See <<https://www.pewforum.org/2017/11/29/europes-growing-muslim-population>> accessed 27 March 2019.

<sup>12</sup> Article 1 of CRC.

the International Covenant on Economic, Social and Cultural Rights (1967). Although child marriage is a problem of childhood, the UN Convention on the Elimination of All Forms of Discrimination against Women has to be mentioned, as it not only requires the free and full consent of the intended spouses but Art 16 also declares that the betrothal and marriage of a child shall have no legal effect. Besides, all necessary action shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official register compulsory, according to this Convention. The general comment No. 18 of the Committee on the Rights of the Child on harmful practices is clear, as it states that child marriage is considered to be a form of forced marriage.

The undesirability of child marriage (and forced marriage) shows up not only internationally but also on the European level, and the steps towards the direct prohibition of child marriage have been strengthened recently. Art 12 of the European Convention on Human Rights is in harmony with the international human rights' requirement of entering into marriage only at a marriageable age. The Parliamentary Assembly of the Council of Europe adopted a recommendation on forced marriages and child marriages in 2005 (Recommendation 1723). It recommended, *inter alia*, that the member states should be encouraged to inform pupils concerning their right to have their own decisions whether to marry, and should help the victims of forced marriage, punish the persons who participate voluntarily in a forced marriage or child marriage and to terminate child betrothals. In June 2018, the Parliamentary Assembly adopted a resolution on forced marriage in Europe (Resolution 2233). It recited that every day 39,000 young girls are married before reaching the age of majority and more than one third of them are younger than 15. The resolution repeats the risks that children face when marrying before their majority age and underlines that a child marriage is a forced marriage as 'a child cannot be considered to have expressed full, free and informed consent to a marriage'. It requires that forcing someone to marry should be criminalised; child marriage should be prohibited without exception. It adds that the differences between girls and boys in terms of the minimum age of marriage should be abolished and also civil law measures should be adopted against forced marriage. The Parliamentary Assembly welcomed the UN's Sustainable Development Goals, as they intend to eliminate forced marriages by 2030. (The 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals<sup>13</sup> was adopted in 2015 by 193 countries.) The European Parliament also raised its voice against child marriage, stating that the child marriage rate was declining but 'still too many' child marriages happen.<sup>14</sup>

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<sup>13</sup> See <<https://www.un.org/sustainabledevelopment/development-agenda>> accessed 27 March 2019.

<sup>14</sup> See <[http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/623526/EPRS\\_ATA\(2018\)623526\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/623526/EPRS_ATA(2018)623526_EN.pdf)> accessed 27 March 2019.

## IV Child Marriage in Europe – Some Examples

In Europe, the marriageable age is 18 almost without exception as a main rule, but in several countries a minor over the age of typically 16 may enter into a marriage. This is the case e.g. in Bulgaria, where persons at the age of 16 may marry with court permission,<sup>15</sup> in Poland, where the guardianship court may permit a woman who has reached the age of 16 to marry,<sup>16</sup> in Portugal, where the legal representative may authorise a person over 16 but below 18 to marry<sup>17</sup> and in Romania, where the approval of the parents or legal guardians and that of the family court is needed for the marriage of minors.<sup>18</sup> In Slovenia not 16 but 15 is the lowest age for a valid marriage, as they can marry if they receive permission from the local social services office,<sup>19</sup> and in Spain the possibility of 14–15-year-old children to enter into marriage was abolished only in 2015 and now the age limit is 16.<sup>20</sup>

There are, however, some European countries where it is impossible to enter into a marriage under the age of 18. These developments happened recently, just as the consequences of having to face child marriages among minor migrants. In Sweden, in the Netherlands and in Denmark marriage under the age of 18 came to be prohibited in the last years (in Sweden already in 2014, in the Netherlands in 2016 and in Denmark in 2017).<sup>21</sup> In Germany, the growing presence of married migrant girls resulted in the adoption of an Act to Combat Child Marriages, which entered into force in July 2017.<sup>22</sup> The aim of this Act was to prohibit all marriage under the age of 18 and eliminate all exceptions under that age, but it tended to reach the intended spouses under foreign applicable law when they enter into marriage in Germany. The German legislation created complex rules with an impact not only on national family and marital law but also on private international law.<sup>23</sup>

## V Child Marriage in Hungary – Historical Embeddedness and Current Regulation

In Hungary the HCC replaced the earlier Civil Code of 1959 and also the independent Family Act of 1952 and entered into force in March 2014. According to the family law rules of HCC a man and a woman of full age can enter into a marriage. However, if a minor enters into marriage

<sup>15</sup> Dimitar Topuzov, 'Developments in Family Law – Year by Year, Bulgaria' in Orsolya Szeibert (ed), *Developments in Family Law. Year by Year 1* (ELTE Eötvös Kiadó 2018, Budapest) 30.

<sup>16</sup> Piotr Fiedorczyk, 'Developments in Family Law – Year by Year, Poland' in Szeibert (n 15) 117.

<sup>17</sup> Rute Teixeira Pedro, 'Developments in Family Law – Year by Year, Portugal' in Szeibert (n 15) 134.

<sup>18</sup> Marius Floare, 'Developments in Family Law – Year by Year, Romania' in Szeibert (n 15) 149.

<sup>19</sup> Suzana Kraljić, 'Developments in Family Law – Year by Year, Slovenia' in Szeibert (n 15) 169.

<sup>20</sup> Jordi Ribot, 'Developments in Family Law – Year by Year, in Szeibert (n 15) 183.

<sup>21</sup> Marc-Philippe Weller, Chris Thomale, Ioana Hategan, Jan Lukas Werner, 'Das Gesetz zur Bekämpfung von Kinderehen – eine kritische Würdigung' (2018) 65 (17) FamRZ 1291–1292.

<sup>22</sup> Nina Dethloff, 'Child Brides on the Move: Legal Responses to Culture Clashes' (2018) 32 (3) IJLPF 302.

<sup>23</sup> Dieter Schwab, 'Die verbotene Kinderehe' (2017) 64 (17) FamRZ 1369–1370.

in the absence of the prior permission of the guardianship authority then this marriage is invalid [Art 4:9(1) HCC]. Although Hungarian family law distinguishes between non-existent marriage and invalid marriage, the marriage of a minor without the permission of the guardianship authority shall not result in the same more serious legal consequence as non-existence but only invalidity. The guardianship authority may grant permission for a minor over the age of sixteen if this minor has limited capacity. The guardianship authority shall decide to grant or reject the application after hearing the parent or the guardian. Those parents who may not exercise their custody rights even in substantial matters affecting the future of the child, or whose whereabouts are unknown or who cannot be heard due to other irremovable obstacles need not be heard [Art 4:9(3) HCC]. A marriage concluded in the absence of the guardianship authority's permission or before one of the spouses reaches the age of sixteen shall become valid retroactively to the date of its conclusion, after six months of the spouse reaching majority if the spouse concerned does not challenge the validity of the marriage within this term of preclusion, or the court, at the spouse's request, terminates the action brought on this ground earlier by another person entitled to do so.

Government Decree No 149/1997 (IX. 10.) on the guardianship authorities and child protection procedures contains the detailed rules on the permission of the guardianship authority concerning the marriage of a minor over 16.<sup>24</sup> The request for permission has to be submitted by the minor over 16 and he or she has to attach the doctor's certificate that the child is physically and mentally mature enough to enter into marriage and the certificate or statement of both intended spouses concerning their income, as the guardianship authority's task is to convince the court that the costs of living of the intended spouse under 18 and his or her child or the child which is to be born before the intended spouse reaches his or her majority are covered. According to the Decree, the minor has to attend counselling by the family protection service and has to attach the certificate of attendance. The public guardianship authority has to hear the intended spouses and the minor's legal representative and has to make a report about the future living circumstances of the minor. The guardianship authority shall hear the intended spouses on the arguments in favour of permission, and, according to Art 36 of the Decree, the guardianship authority permits the marriage of the minor if it is in the child's interest and the request for permission was submitted upon the free will of the minor without their being influenced.

The HCC contains almost identical rules to those of the Family Act of 1952 (Act No IV of 1952) concerning the minor's marriage. I would emphasise that, although the Family Law Book (Fourth Book) of the effective HCC always uses the word 'child' for people under 18, its Book on the Individual as Subject of Law (Second Book) never say a word about children, as it uses the term 'minor' in harmony with the traditional civil law rules. At the very end of the 20th century, when the recodification of the Civil Code began (actually in 1998) the children's rights' issues were not in the foreground and it can explain why the rules concerning

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<sup>24</sup> Articles 34–36 of Government Decree No 149/1997 on the guardianship authorities and child protection procedures.

the minor's marriage were seen to be stable. The rules that were in force at the end of the 20th century concerning a child's marriage in Hungary were in harmony with the European trends regarding minors' marriage options.

In the 19th century, children over 12 could enter into marriage in Hungary; if they married they reached their full capacity to act, as this was an immediate consequence of the marriage. In 1894, the Hungarian Marriage Act distinguished between mature and immature persons and declared 16 years for women and 18 years for men as the lower limits for marriage. However, a dispensation could be given for a minor over 12, regardless of it being for a girl or a boy. It changed in 1953 when the unified age limit of majority became 18 but a child could enter into a marriage with ministerial permission over 12 also at that time. Act I. of 1974, within the framework of the first comprehensive reform of the Family Act, lifted the age limit for marriage but applied a difference upon the basis of sexes. Men could marry from the age of 18 and women could marry from the age of 16. The age limit of marriage with permission was 2 years lower for both, which meant that men could marry with permission from the age of 16, while women from 14. Act IV of 1986, the second comprehensive reform of the Family Act, unified the marriageable age and lifted it to 18 for both men and women while it maintained the possibility of entering into marriage over the age of 16 with permission.<sup>25</sup>

The recodification of civil law, which affected family law and marital law in their entirety, would have given a chance to re-evaluate marriage involving the minors but it did not happen at all. At that time, the very end of the 20th century and the very beginning of the 21st century, the norms of children's rights were not really strong and the Hungarian recodification of civil law followed the aim of maintaining the then effective provisions if possible. Even the thought of modifying the minor's marriage or rather child marriage did not emerge. It was not debated whether a minor – a child – is mature enough to enter into a marriage; even the need to maintain of the then effective rules was accepted. Although the experts taking part in the recodification process recognised that the marriageable age had earlier been one of the most debated issues, they concluded that the requirements of marrying as a minor were well established and applied in the practice of the guardianship authority.<sup>26</sup> Some years later the thought that the issue of marriageable age does not require any modification was reinforced.<sup>27</sup>

<sup>25</sup> Sipócz László, *A gyámsági törvény magyarázattal (Act on guardianship with explanations)* (1882, Budapest), 10–13; Nizsalovszky Endre, *Magyar családi jog (Hungarian Family Law)* (1949, Budapest) 19. Short summary in Hungarian: Szeibert Orsolya, 'Gyermektartás és szülőtartás – változások a gyermeki jogállás és a szülői kötelezettségek alakulásának tükrében (Child maintenance and maintenance for parents – changes in the mirror of the shaping of child's status and parental obligations)' in Szeibert Orsolya (ed), *Család és családtagok. Jogági tükröződések (Family and family members. Reflection in branches of law)* (ELTE Eötvös Kiadó 2018, Budapest) 39–40.

<sup>26</sup> Weiss Emilia, 'A készülő Polgári Törvénykönyv családjogi könyvének a Kodifikációs Szerkesztőbizottság által elfogadott koncepciója (The Concept of the Family Law Book of Civil Code under reconstruction being adopted by the Codification Organising Committee)' (2001) (4–5) *Polgári Jogi Kodifikáció (Civil Law Codification)* 22–23.

<sup>27</sup> Weiss Emilia, 'Néhány kérdés a készülő Polgári Törvénykönyv családjogi könyve koncepciója köréből (Some issues concerning the concept of the Family Law Book of the Civil Code under elaboration)' in Gyekiczky Tamás (ed), *Ami a múltból elkísér. A családjogi törvény ötven éve (What escorts us from the past. Fifty years of Family Act)* (Gondolat–Infonia 2005, Debrecen) 24–25. And also in 2013, Weiss Emilia, 'A Ptk. Családjogi Könyvéről (About the Family Law Book of Civil Code)' (2013) (9) *Jogtudományi Közlemények (Gazette of Legal Jurisprudence)* 406–407.

The fact that a child can marry at the age of 16 with the permission of the guardianship authority was not questioned, even though the studies analysing and explaining the codification underlined the importance of the child's interests and the aim to protect the child's rights and interests in harmony with the CRC.<sup>28</sup>

## VI Conclusion – the Child's Evolving Capacities and Free Consent

Although the general comment No. 18 of the Committee on the Rights of the Child on harmful practices would prohibit child marriage, it adds the following:

as a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, a marriage of a mature, capable child below 18 years of age may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition.

On the other hand, it is tradition and multiculturalism in connection with a lot of issues that can be mentioned as well.<sup>29</sup>

The prohibition of child marriage has the aim of protecting children as it has to be assumed that they cannot have free consent just because of being underage. The CRC does not work with ages, except for the age of 18, but uses the model of evolving capacities, which have to be analysed for each child according to the special circumstances of the case. That is what the above-mentioned option of the general comment emphasises – it is not the child's age alone that has to be taken into attention in the case of an underage marriage and tradition or religion should not be a decisive factor. However, it does not seem to be easy to determine whether a child between 16 and 18 has clearly free consent to marry. In my concluding words, I would refer (again) to the main targets of goal 5, namely to 'achieve gender equality and empower all women and girls' of the UN's Sustainable Development Goals, and especially 5.3, as to eliminate all harmful practices, such as child, early and forced marriage.

In sum, child marriage is a violation of human rights according to UNICEF.<sup>30</sup> Both the words 'child' and 'marriage' cause positive feelings; however, marriage is an institution for adults and not for children. That is why the term 'child marriage' is held to be inappropriate.<sup>31</sup>

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<sup>28</sup> This child-focused attitude is shown in the codification studies of Emilia Weiss. These studies are included in Szeibert Orsolya (ed), *Weiss Emilia családjogi és öröklési jogi kodifikációs tanulmányai (Codification studies of Emilia Weiss in the field of family law and succession law)* (ELTE Eötvös Kiadó 2017, Budapest) 403.

<sup>29</sup> Dethloff (n 22) 302. The cautiousness concerning the role of the state when children's rights are at stake is underlined from the perspective of Muslim jurisdictions – see Dörthe Engelcke and Nadjma Yassari, 'Child law in Muslim jurisdictions: The role of the state in establishing filiation (nasab) and protecting parentless children' (2019) 34 (3) *Journal of Law and Religion* 332–335; doi:10.1017/jlr.2019.40.

<sup>30</sup> See <<https://data.unicef.org/topic/child-protection/child-marriage>> accessed 27 March 2019.

<sup>31</sup> Arthur van Coller, 'Child Marriage – Acceptance by Association' (2017) 31 (3) *IJLPF* 363.

It is rooted in traditions and its right to existence often goes unquestioned – just as happened and still happens in Hungary, as the Decree declares it is permitted if it serves the child's interest. How can marriage serve the child's interest at all? A child needs protection, which has to be provided by the parents, relatives, society and the state and there is no need for a spouse at a child's age to give that protection. It is not primarily the European continent where child marriage occurs too often, but allowing children to marry transmits a message to society. The study provides an overview of the Hungarian rules on child marriage and an introduction to the international and European context of child marriage, with special regard to the latest developments and requirements.