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# UNDERAGE MARRIAGE – A COMPARATIVE ANALYSIS

**ABSTRACT:** Underage marriages represent a specific form of marriage, established between underage partners, one or both of whom are minors. Underage marriage is a complex social phenomenon that withstands social changes, highlighting the relevance of this topic. The aim of the research of this paper is to look at the legal solutions concerning underage marriage in the Republic of Serbia with special reference to the legislations of France, England, Germany, Romania and Poland. By using the normative method, the authors will analyze the provisions of the most important laws that are relevant to the topic in the mentioned countries, while comparative analysis will reveal similarities and differences on issues related to underage marriage. Drawing on research that has examined the prevalence of underage marriages worldwide, the authors will present these findings to gain insights into the "real-life" situation, i.e., the prevalence of these marriages.

***Keywords****: underage marriage, underage, legal legislation, Republic of Serbia, France, England, Germany, Romania, Poland.*

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# 1. Introduction

By getting married, spouses are expected to take on the obligations and responsibilities that come with married life. This is also required of minors who enter into marriage, regardless of the fact that they are still children and are not prepared to assume these obligations. Therefore, we can ask the question whether minors can "bear" the responsibility imposed by married life and whether the responsibility lies only with them?

In the public in the broadest sense, for the last few years, the question of the necessity of banning underage marriages has been constantly emphasized, which was especially relevant in 2019 in the Republic of Serbia, when preparations and amendments to the Family Law were announced. At that time, it was foreseen "a ban on minor marriages, as well as criminal sanctions for parents who allow or contract such marriages, as well as for adults who start living together with a minor" (Đorđević, 2019). Several working groups that were formed with the task of proposing amendments to the family legislation generally did not make a name for themselves in their work, and amendments to the Family Law have not yet occurred.

From a comparative point of view, marital maturity coincides with the age of majority in most laws, as well as in our country. And the effect of minors as an impediment to marriage can be removed by obtaining permission from the competent authority. In most laws, this possibility is linked to the age of 16, and it is necessary that certain persons and (or) competent authorities agree to the conclusion of the marriage.

In order to understand the problem that underage marriages "carry" and to be able to approach its solution, we must deal with various aspects of this phenomenon, such as the historical analysis of the origin of underage marriages, traditions, customary and moral norms, religious understandings of the position of women, economic dependence of women, insufficient or the complete lack of education of girls and women, the traditional attitude towards early marriages and early initiation into sexual relations, the medical problem of early sexual relations, early births and high mortality, the cultural understanding of certain environments, the psychological maturity of persons entering into marriage, the social milieu of the environment in which minors live, etc.

Therefore, from this enumeration of aspects of looking at the problem, we can state with certainty that, in our opinion, the problem cannot be solved by adopting a certain legal provision or by simply normalizing a certain disputed relationship. The problem is so complex that it must be dealt with

in an interdisciplinary manner by teams of experts from different fields with a well-prepared program of activities and a multi-year calendar of activities. Therefore, although it is the state that has the obligation to provide the child with protection and care that will enable him to grow and develop properly, which is necessary for his well-being, it cannot act independently when it comes to the issue of underage marriages.

The minimum limit of marriageability has been different throughout history, and these differences are still noticeable among certain peoples today. It is relevant to note that there are also significant individual differences between individuals in reaching marital maturity. However, in law, a certain age must be set equal for everyone, as a legal presumption. The demand for legal certainty requires overcoming the individual differences that exist between people. And by reaching a certain age, a person acquires marriage capacity, without fulfilling any form (Ponjavić & Vlašković, 2022, p. 93). In order to accurately assess the state's position regarding marriage maturity and underage marriage, within this paper we will analyze the position of the legislators of the Republic of Serbia, France, England, Romania, Germany and Poland. Also, we will show to what extent and among which population these marriages are represented in a wider area. In this way, we can find out in which direction and in which way this problem should be approached in an interdisciplinary manner, which will be a special topic of a new work.

## 2. Underage marriage in the Republic of Serbia

The legislator in the Republic of Serbia, based on the interests of individuals and society, has precisely determined the principles that are important for marriage, as well as the conditions for concluding a marriage. In this sense, in the family legislation of the Republic of Serbia (Family law, 2005), the legislator has foreseen the conditions for entering into marriage. Thus, the provisions of Articles 17 to 26 of the Family law provide for obstacles to marriage, namely: marriage, incapacity for judgment, blood relationship, adoptive relationship, in-law relationship, guardianship and free will. Article 23 of the Family law expressly stipulates that marriage cannot be concluded by a person who has not reached the age of 18. Paragraph 2 of the same article stipulates that the court may, for justified reasons, permit the marriage of a minor who has reached the age of 16 and has reached the physical and mental maturity required for the exercise of rights and duties in marriage. On the other hand, minors under the age of 16 represent an irremovable marital obstacle and entail the relative nullity of the marriage (Počuča, 2010, p.

87). However, if it is about a person who is older than 16 years, this marital obstacle can be removed (Počuča & Šarkić, 2020, p. 109). It is necessary to fulfill the requirements determined by the law, that is, the provision of Article 23, paragraph 2 of the Family law, which in our opinion should cause controversy. Namely, this provision is insufficiently precise or perhaps does not fully reflect the will of the legislator, which should state that marriages of minors can only be allowed exceptionally, we repeat only exceptionally. Therefore, it must not become any kind of rule or routine procedure in which some mere process form is fulfilled and the desired goal is reached.

The first question refers to who will make the decision on the marriage of minors between the ages of 16 and 18. The answer to this question is given by Family law himself, who says that the court is an authority that can exceptionally make such a decision. Considering the nature and character of this procedure, it is a first-instance court (now a basic court), and the matter is non-contentious, which will be discussed later. The granting of permission, i.e. the passing of a decision by the court, is the way in which the marital disturbance (dispensation) is resolved (Kovaček Stanić, 2007, p. 80).

The legislator assigns the task to the court that it can, for justified reasons, allow the marriage of a child between the ages of 16 and 18, provided that he has reached the physical and mental maturity required for the exercise of rights and duties in marriage. The legislator does not provide any objective or at least objectified criteria regarding the set condition of what can be considered a justified reason, as well as what is the physical and mental maturity required for the exercise of rights and duties in marriage.

In the non-litigation procedure, the issues of granting permission for the marriage of minors are also regulated. Local jurisdiction for conducting these procedures is determined according to the territory where one or both future spouses live (residence or residence). In pre-war law, permission was granted by the county court that had jurisdiction over minors according to the rules of civil procedure on general local jurisdiction (Stanković, 1982, p. 198).

By provision of Article 80, paragraph 1 of the Law on non-litigation procedure Law on Non-Contentious Proceedings, 1982 (hereinafter LNCP) stipulates that if only one person is in the age category of 16 to 18 years, then he submits the proposal independently, while a joint proposal is submitted if both persons who want to enter into marriage are minors. A proposal for a marriage license can be submitted only by an interested minor, not by his parent, guardian or proxy. So the possibility of representation is excluded, and in this way the pressure of the family of minors is avoided in areas where these cases are widespread (Babić, 1999, p. 69).

It should be said that in the non-litigation procedure, the procedural form is not excessively strict and that the submitted proposal can only clearly understand what the basic goal is, and whether the conditions stipulated by law for the realization of that goal are met. However, the proposal must contain personal data about the persons who wish to conclude a marriage, such as first and last name, day, month and year of birth, residential address, etc. Facts must also be attached on the basis of which it is claimed that the request for consent is justified in the sense that the person has the appropriate mental and physical maturity. This would be, for example, a diploma from a school, a certificate of employment, work characteristics or a recommendation, a previously obtained opinion of the center for social work on the circumstances of the minor's earlier life, obtaining the opinion of a doctor on the circumstances of the health condition, obtaining the opinion of a gynecologist or obstetrician on a possible pregnancy of the applicant or of the applicant's partner, etc.

Data on parents naturally refer to parents who exercise parental rights without any hindrances or restrictions (they are not deprived of parental rights, they have not renounced parental rights, they are not deprived of legal capacity, etc.).

In our complete analysis, the most significant provision of Article 82 of the LNCP, which governs the obligation of the court to examine all circumstances that are important for determining whether there is a free will and desire of a minor to enter into marriage, as well as whether a minor has reached physical and the mental maturity required for the exercise of rights and duties in marriage. It is important that the decision of the court depends on whether the minor's proposal for early marriage will be accepted or rejected (Jović, 2003, p. 193).

In contrast to the Family law, which refers us only to the fact that the degree of physical and mental maturity must be determined as a criterion for granting permission, the LNCP quite justifiably insists on determining whether there is a free will and desire of the minor to enter into marriage. However, we have to make a digression on this question. Namely, the entire procedure for concluding a marriage is managed by the registrar, which is prescribed by articles 292-304 of the Family law. The registrar checks with each request for marriage whether the conditions for marriage are met, i.e. whether there is any marital impediment or marriage ban. If minors have applied to the registrar with a request to enter into marriage, when he determines that they are under 16 years of age, he will teach them that there are no possibilities for entering into marriage. If they are between 16 and 18 years of age, the registrar will refer them to the basic court in their place of residence, explaining that they must submit a request to obtain court approval for the marriage.

If the minors do not receive this permission, the registrar does not conduct any further procedure. If this consent is obtained by the court, the registrar is obliged to check all other elements that affect the validity of the marriage (whether the future spouses are in some kind of prohibition regime based on kinship, whether one of them has already established a marriage that did not end on legal way: death of spouse, divorce or annulment) etc. Of course, the registrar will also have to check the agreement of the will of the future spouses, i.e. whether there is any flaw in the will (force, threat or delusion).

The registrar is certainly not released from the obligation to take into account all other obstacles or prohibitions in the process of entering into a marriage, if consent has been obtained. once again and the will to get married. This is especially important from the point of view of removing any intention to deal with: a marriage arranged by the parents, the sale of a minor, a fictitious marriage with completely ulterior motives, the sale of a child into white slavery, etc. Certainly, we can express the most objections and justified indignation at paragraph 2, Article 82 of the LNCP, which enumerates the actions of the court that must be performed in this procedure, but in our opinion without the necessary "firmness" and procedural obligations for both the court and the participants in the procedure.

The law provides that the court will obtain the opinion of the health organization. This formulation does not satisfy us in any case because it is not defined as for example: the court will necessarily obtain the opinion of a health organization, it does not say which health organization (so it can be interpreted as a health center or a rural clinic, which was certainly not the intention). The legislator does not even say under what circumstances the health organization's opinion will be obtained, which would have to be apostrophized, because depending on that, an answer from the health organization may be obtained, for example, that the applicant is healthy, that he has the general health capacity required for work , that he is so and so tall, weighs so and so, well-nourished, or something similar.

The central task of the court is to exceptionally approve the marriage of minors. This exceptionality must be confirmed. In order for this specificity and deviation from the general rule that marriage is only allowed from the age of 18 and above, it must be clearly defined and it would be necessary to write that the court will necessarily obtain the opinion of a doctor – a psychiatrist or possibly a psychologist, on the circumstance of general health the condition of the applicant, his physical development and especially apostrophize on mental capacity – maturity. Why? Of course, because this certificate from a doctor or health care institution should help us to abandon the general rule

that underage marriage is not allowed and that only persons who are explicitly determined to meet that condition (of general physical and mental maturity) are allowed to marry.

In Article 82, paragraph 2 of the LNCP, it further states that the court will achieve appropriate cooperation with the guardianship authority. And this formulation is far from satisfying us. Achieving cooperation seems completely illegal and refers more to some informal contact of the type: they will talk, listen, talk, etc. The wording should read that the court will obtain an expert opinion from the appropriate center for social work (the guardianship body is a body within the body and the institution is the center for social work, which is a legal entity) and on the circumstances: the conditions in which the future spouses live, their economic situation, resolved housing issue, about family support for marriage, the existence of other circumstances that may influence the adoption of a positive or negative decision.

The law further provides that the court will hear the petitioners, which seems quite understandable. From this conversation with both future spouses, the judge must get an impression of whether it is a matter of sincere will and intention, what is the level of social culture of the future spouses, what is their motivation for entering into marriage, etc. Also, the legislator envisages the obligation of the court to obtain the opinion of the parents or associates of the person with whom the minor intends to enter into marriage. Parental support or prohibition can be very important for a future marriage. We know that even when it is not about a minor marriage, the support of parents is very important. On the other hand, the negative attitude of parents towards future spouses can have serious consequences on the quality of the marriage itself and its functioning. Furthermore, the LNCP foresees that the court will, if necessary, present other evidence and obtain other data, which could be data related to a possible pregnancy, employment, the possibility of continuing education, some data related to property status, etc. In addition to the aforementioned LNCP, there is also a procedural possibility to present certain evidence at the hearing (certainly hearing of future spouses, hearing of parents, hearing of medical experts, hearing of relatives, etc.). Other evidence can be presented by the court in the form of reading written evidence (medical certificates, cadastre certificate of property status, employer's certificate of employment and earnings, etc.).

The law stipulates that in the decision allowing the conclusion of marriage, the personal names of the persons between whom the conclusion of marriage is allowed, which practically means that the permission to conclude marriage cannot be given a priori. Each request (if, for example, there are more of them during the period from 16 to 18 years old), is a case in itself and here is a court

decision (the decision of a non-litigation court on granting consent to conclude a marriage must be individually precise and personally determined).

As we mentioned, the Law foresees the possibility of a two-stage process, so an appeal can only be filed by a minor who submitted a request to conclude a marriage. The joint proposal for a marriage license can be withdrawn by the proposers until the decision becomes final. It will be considered that the proposal has been withdrawn when one of the proponents withdraws from the proposal (more in: Trgovčević Prokić, 2002, p. 25; Trgovčević Prokić, 2011, p. 167).

## 3. Underage marriage – a comparative legal overview

Observed from a comparative legal aspect, we come to the knowledge that marital maturity generally coincides with adulthood. In modern laws, the age of eighteen is most often stipulated for the acquisition of business and marital capacity, with a note that many Western European countries introduced this limit in the seventies of the last century. So, for example, in France and Germany, the age of eighteen was introduced in 1974, and in Great Britain in 1969 (Glendon, 1996, p. 38). However, the effect of minors as an impediment to marriage can be removed by obtaining permission from an unauthorized authority or from the parents, so that it is possible to conclude minor marriages in comparative law as well. For the purposes of this research, and with the aim of a comprehensive analysis of underage marriages, we have selected the national legislation of France, Romania, Germany, England and Poland.

***France.*** In France, permission to enter into an underage marriage is given by the parents, and in certain cases by the state prosecutor. The consent of both parents cannot be replaced by a court decision, so it depends on the will of the parents whether a minor will be able to marry. In case of disagreement between parents, consent is considered to exist. In the case of a female under 15 and a male under 18, consent for marriage is given by the state prosecutor in cases where there are important reasons, such as the woman's pregnancy (Glendon, 1996, p. 39). Until 2013, French law made a difference between female and male persons when it comes to the age at which marriage is allowed, and the minimum age for a woman was 15 and for a man 18. According to the Civil Code of France from 2013, the legal the age of marriage is 18 for both men and women. According to French law, minors under the age of 18 do not have business capacity, which means that they acquire business capacity upon reaching the age of majority. Minors under the age of 18 are represented by their legal representatives, usually parents, when exercising their rights (Rights of minors in court proceedings, 2020).

***Romania***. In modern Romanian law, until 2009, women acquired marital capacity earlier than business capacity, i.e. at the age of 16, and men at the same time as business capacity, i.e. at the age of 18. Also, the legislator provided that in exceptional circumstances, a woman can get married at the age of 15. Respecting the principle of full equality between men and women, the legislator in Romania in the current Civil Code from 2009 prescribed the same minimum age for marriage for men and women – 18 years. According to the Civil Code, the legislator allows marriage before the age of majority if certain conditions are met, namely: if the child who wants to get married has reached the age of 16, if there are good reasons for the marriage, such as the pregnancy of the future wife, then the existence of the consent of the parents, or, if necessary, the consent of the guardian, or the authority that was obliged to exercise parental rights, and the existence of the consent of the competent guardianship court in whose jurisdiction the child is. The Romanian legal system did not foresee conditions in terms of the age difference between the future spouses, but from the judicial practice it was concluded that an excessive age difference between the spouses can be an indicator of a fictitious marriage, which will be sanctioned by its annulment (Gidro, 2014, pp. 18-19).

***Germany.*** In Germany, marriage maturity is attained at the age of 18, and for this reason, according to the Civil Code, marriage cannot be concluded earlier, but the family law can make an exception, i.e. a dispensation is possible for persons who have reached the age of 16, and approval is given by guardianship court, with the condition that the other spouse is of legal age. In order for a minor marriage to be possible in the event that both future spouses are minors, the consent of the parents is also required, and if the parents refuse to give their consent without a valid reason, it can be replaced by the consent of the court, at the request of the minor (Graue, 1995, p. 168). Many representatives of organizations for the protection of human rights, as well as lawyers and politicians, who are of the opinion that underage marriages should be prohibited, spoke about the subject of underage marriages. In order to harmonize common rules on this issue, the Minister of Justice of Germany, Heiko Maas, formed a working group consisting of representatives of the state and the German federal states (Hodali, 2016). Migration, and especially the recent influx of refugees, has led to an increasing number of child marriages in Germany, as well as in many other European countries. Girls very often get married very young before leaving their country or while fleeing, and the question arises about the recognition of these marriages. Thus, for example, a fourteen-year-old girl in Syria married her cousin who was 21 years old. They fled together from the war-torn country to Aschaffenburg. Their marriage was

refused to be recognized by the Office for Youth and took the girl under his guardianship, with the explanation that it was done for the child's welfare. The husband of this girl went to court and lost the case at first instance. However, the Higher Regional Court in Bamberg overturned this ruling citing the basic principle that applies in Germany, which is that marriages concluded abroad are judged on the basis of the law of the country of origin. The growing presence of married young migrant women led to a public debate and the adoption of the Law on Suppression of Child Marriage in 2017. This Act was designed to allow judges to retroactively annul marriages that took place outside the country, if the minor was between 16 and 17 at the time of the marriage, and if the person was under 16, the marriage would automatically be annulled (Dethloff, 2018).

***England.*** In England, until the middle of the 18th century, marriages could be concluded anywhere, provided that they were concluded before an ordained priest of the Church of England. This encouraged the development of the practice of secret marriages, which did not have parental consent. For this reason, in 1753, on the initiative of Lord Hardwicke, the Marriage Act was promoted, which stipulated that all wedding ceremonies must be conducted in a parish church or chapel of the Church of England in order to be legally binding. During this period, no marriage of persons under the age of 21 was legal without the consent of a parent or guardian. In response to a campaign by the National Union of Societies for Equal Citizenship in 1929, Parliament raised the age limit to 16 for both sexes with the Marriage Age Act (UK Parliament, n.d.). Until 2023, in England, minors could marry at the age of 16, and consent was sought from their parents, that is, persons who had parental responsibility. If they did not get the consent of the parents, the court could allow the marriage (Jones & Welhengama, 1996). However, this practice was abolished because the new Marriage and Civil Partnership Act came into force in England and Wales this year, which stipulates the minimum age for marriage, i.e. 18 years. So it becomes illegal for 16 and 17-year-olds to marry or enter into a civil partnership, even with parental consent. This Act criminalizes arranged marriage for children under any circumstances and introduces harsher penalties for those found guilty of up to seven years in prison (Legal age of marriage increases from 16 to 18 in England and Wales, 2023).

***Poland.*** According to the Family and Guardianship Act of 1964 in Poland, it was illegal for persons under the age of 18 to marry any person. However, the guardianship court may allow a woman who is at least 16 years old to marry, if there are justified reasons and if the marriage will be beneficial for the family's well-being. Also, the Law stipulates that each of the spouses can submit a request for the annulment of a marriage concluded by a man

under the age of 18 and a woman under the age of 16 or if she married without the consent of the court after she turned 16 and before she turned 18 And in the Law on Family and Guardianship from 2011, the minimum legal age for marriage remained 18 for both girls and boys. However, in this legislation a distinction was made, and still today, between boys and girls, which is reflected in the fact that girls who reach the age of 16 and who are older can ask for the permission of the family court in order to enter into marriage, while such an exception does not exist for boys (Poland – OHCHR, 2022).

## 4. Prevalence of underage marriages

In 2019, the United Nations Children's Fund published a report stating that the percentage of women who married before the age of 18 fell from 25% to 21% over the past two decades. Also, they estimate that there are currently 765 million child marriages worldwide (Knipp, 2019). Of these, 650 million girls and women were married before the age of 18. The total number of girls, globally, who are married as children is estimated at 12 million annually, while 10 million girls are at greater risk of child marriage after the corona virus pandemic (Stojić, 2021). And about 115 million men now aged 20 to 24 were underage when they married, while about a fifth were 15 or younger (Knipp, 2019). When it comes to more precise research on the prevalence of underage marriages, it is necessary to emphasize that they have not been carried out in most countries, so we cannot have detailed data on them. It is relevant to state that statistical data on underage marriages broken down by ethnicity are not available in most of the member states of the Council of Europe. This is supported by the fact that the Statistical Office of the Republic of Slovenia does not have precise data on underage marriages due to the fact that the lower limit for data collection is set at the age of 19 (Kraljić, 2023, p. 7). And there is a significant number of unregistered marriages due to the lack of personal documents or the age (ie "youth") of the spouse. Many researches conducted on the subject of underage marriages are not representative for the above reasons. However, many studies report that underage marriages are very common in the Roma population, although these data differ from country to country. Thus, for example, based on a survey conducted in Albania in which 661 Egyptian and Roma households were surveyed, which showed that the average age of marriage among the Roma population is 15.5 years. And in Bulgaria, on the basis of the research carried out in 2010, it was found out that the average age of marriage among all Roma is 18 years, and that 50% of respondents already started living together with their partner at the age of

16 (ERRC Submission to the Joint CEDAW-CRC General Recommendation, 2011). Based on the research of multiple indicators of the position of women and children in the Republic of Serbia for the year 2019, it was found that in the general population, 5.5% of women aged 20 to 24 got married before the age of 18, while this percentage of women who live in the poorest households is significantly higher and amounts to 22.6%. And in Roma settlements as many as 55.7% of women got married before the age of 18, and 15.8% before the age of 15 (A Childhood, not Marriage: A good practice guide for child marriage predvention for local communities, 2021, p. 8).

On the other hand, the collection of data on ethnicity is prohibited in Poland, so there are no statistics related to underage marriages. However, according to the 2011 census, it was found out that e.g. the Roma community in this country is relatively small, from 20 to 25 thousand. An interesting fact is that Poland had the highest average age of marriage in 2020, 30.2 years for men and 27.9 for women (Mean age at first marriage in the European Union in 2020, by country and gender, 2023).

Since 2015, based on information from the German authorities, more than a thousand underage marriages have been registered in this country. Most of these marriages were previously concluded abroad, but the number of marriages concluded in Germany is also increasing. In Germany, the new Law on Suppression of Child Marriage from 2017, according to research by the group Terre des Femmes, did not bring the desired results. More precisely, based on the data of this group, one year after the passing of the aforementioned Law, it was found that at least 813 minor marriages were registered, of which only 10 were annulled (Knipp, 2019). According to data for 2012, Niger had the highest rate of underage marriages in the world. In this country, more than three-quarters of girls under the age of 18 are married, and almost 30% are under the age of 15. Today, India has the highest number of child marriages. In 2020, there were 15.6 million women aged 20 to 24 in this country who were married or cohabiting with a partner before the age of 18 (Countries with the highest child marriage rate as of 2022).

## 5. Concluding considerations

In many European countries, the expected age for marriage is constantly increasing, and only a few decades ago it was lower than the age of majority, and very often lower for girls than for boys. On the basis of a comparative analysis, we came to the conclusion that in the analyzed legislation, marital and business capacity are acquired at the same time, that is, from the age of

18. So, over time, a clear trend has developed to determine the general age for marriage for both sexes. However, the majority of European legal systems provide for exemptions and allow minor marriage with parental approval or court authorization, at a younger age, mostly from 16 years, with the provision that, for example, in Polish legislation today still makes a distinction between men and women. More precisely, women, that is, girls, can ask for permission from the family court in order to enter into marriage, while men cannot. The only legislation from the ones analyzed that does not provide for exceptions in terms of marriage before the age of 18 is the legislation of England.

By analyzing the legal legislation, we come to the conclusion that in most legislations, minors as an impediment to marriage can be removed by obtaining a special permit for early marriage, at the competent court and according to the prescribed procedure. For this reason, we believe that it is of great importance to approach this procedure seriously and responsibly. What can certainly be the subject of different evaluations and additional polemics is the determination of whether the existing exceptions in the analyzed legislation should be regulated even more precisely by decisively determining what the court must do, all with the aim of tightening the criteria regarding the question of when permission to conclude the marriage of a minor can be given.

It should certainly be noted that the personal attitudes of the author of this article towards underage marriages are absolutely negative. We believe that persons aged 16 or 17 in no case have neither the intellectual nor the psychophysical characteristics that are necessary to understand the seriousness of marriage as well as the legal consequences of a constitutive community of life. It is very difficult for the authors to believe that a 16 or 17-year-old person has a developed level of physical and spiritual maturity to be able to understand the seriousness of marriage, the consequences of motherhood or fatherhood, the obligations arising from a community of life, etc. So there is no doubt that the author's opinion on this issue is completely negative. Of course, the diversity of our attitude is primarily reflected in the fact that we believe that the norm itself will not achieve much – in fact, nothing. In order for this problem to be solved at all, one must start from an interdisciplinary solution to the problem, which would first of all start from the cause of the phenomenon (tradition, customs, lack of education, social vulnerability, low level of social culture, etc.). Therefore, the problem cannot be solved by a mere norm and ban, but by permanent education about the harmfulness of underage marriages. This education must include arguments that relate primarily to the health conditions of girls who enter premature sexual relations (who, as a rule, are without adequate knowledge about health care, hygiene, possible consequences, etc.).

By analyzing the research that examined the prevalence of underage marriages, we came to the conclusion that the spread of these marriages in "practice" is, we can say, huge, with the fact that they are more widespread in the countries of South Asia and Sub-Saharan Africa, which represents an "alarm" that should be done as soon as possible and as loud as possible. The reason for this advertising is the fact that early marriages affect the interruption of further education, difficult employment, worsening of the financial situation of parents, etc. which again and again reflects on the quality of marriages concluded, their duration, the possibility of proper upbringing of children, the upbringing of a child in such a marriage, etc.

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# MALOLETNIČKI BRAK – KOMPARATIVNA ANALIZA

**APSTRAKT**: Maloletnički brakovi predstavljaju specifičan oblik brakova, koje međusobno zasnivaju maloletni partneri, jedan ili oba. Brak maloletnika je kompleksna društvena pojava koja odoleva društvenim promenama, što nam ukazuje na relevantnost ove tematike. Cilj istraživanja ovog rada ogleda se u sagledavanju zakonskog rešenja koja se tiču maloletničkog braka u Republici Srbiji sa posebnim osvrtom na zakonodavstva Francuske, Engleske, Nemačke, Rumunije i Poljske. Korišćenjem normativnog metoda autori će analizirati odredbe najvažnijih zakona koji su od značaja za temu u navedenim zemljama, dok će komparativnom analizom doći do saznanja o sličnostima i razlikama

o pitanjima koja su u vezi sa maloletničkim brakom. Oslanjajući se na istraživanja koja su ispitala zastupljenost maloletničkih brakova u svetu autori će prikazati iste i na taj način doći do saznanja o stanju „u praksi", odnosno o rasprostranjenosti ovih brakova.

***Ključne reči**: maloletnički brak, maloletstvo, zakonska legislativa, Republika Srbija, Francuska, Engleska, Nemačka, Rumunija, Poljska*.

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