

## BETWEEN LAW AND REALITY: PROSECUTING FORCED MARRIAGE IN BOSNIA AND HERZEGOVINA

### 1.01 Original Scientific Article

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**Abstract:** This article examines the prosecution of forced marriage in Bosnia and Herzegovina, situating the phenomenon within its theoretical, doctrinal, and comparative legal dimensions. It highlights the fragmented criminal law framework across the Federation of Bosnia and Herzegovina, Republika Srpska, and the Brčko District, noting significant divergences in definitions, scope, and victim protection. While the criminalisation of forced marriage represents a step forward, narrow conceptions of coercion, inconsistent treatment of minors, and the absence of integrated victim support undermine effective protection. The analysis also explores the intersection between forced marriage and human trafficking, emphasising how inconsistent recognition across jurisdictions limits access to the broader protective regime afforded to trafficking victims. The article concludes that legislative harmonisation, a broader understanding of coercion, and the adoption of victim-centred measures are essential for Bosnia and Herzegovina to comply with its constitutional and international obligations, and to align with the *acquis communautaire* of the European Union.

**Keywords:** forced marriage, human trafficking, Bosnia and Herzegovina, criminal law, victim protection.

### 1. Introduction

Forced marriage represents a profound violation of fundamental human rights, striking at the core of personal autonomy, human dignity, and gender equality. As a practice that denies individuals the freedom to choose their life partner, it undermines not only the institution of marriage as a voluntary union but also the broader framework of human rights protections enshrined in international law. Although often perceived as a phenomenon affecting distant

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regions, forced marriage has emerged as a pressing legal and social issue within Europe, including in Bosnia and Herzegovina.

In Bosnia and Herzegovina, the challenge of addressing forced marriage is shaped by the country's complex constitutional structure and fragmented criminal justice system, where distinct entity- and district-level laws operate alongside state-level obligations. While the criminalisation of forced marriage has been formally introduced in all relevant criminal codes, important discrepancies remain regarding definitions, scope, and victim protection. These divergences raise significant concerns about the effectiveness of prosecution and the uniformity of legal safeguards available to victims across the country.

The issue also resonates within the broader European integration process. As Bosnia and Herzegovina advances on its path toward membership in the European Union, the alignment of domestic law with EU standards becomes an imperative. In this regard, Directive (EU) 2024/1385 on combating violence against women and domestic violence provides a critical benchmark for assessing compliance. The Directive obliges Member States to ensure comprehensive criminalisation of forced marriage and related practices, thereby establishing a uniform framework of protection across the Union.

Against this background, this article examines the prosecution of forced marriage in Bosnia and Herzegovina from both a doctrinal and comparative perspective. It analyses the theoretical foundations of the concept, the normative content of domestic criminal provisions, and their alignment with international and EU legal instruments. In doing so, it seeks to identify the extent to which existing laws provide effective protection for victims, as well as the reforms necessary to ensure that Bosnia and Herzegovina fulfils its constitutional and international obligations.

## **2. Theoretical Framework and Background**

The concept of forced marriage occupies an important place in contemporary legal, sociological, and human rights scholarship. At its core, forced marriage can be defined as a marital union entered into without the full, free, and informed consent of at least one of the spouses, where consent is replaced or undermined by coercion.<sup>2</sup> This coercion may manifest in various forms, ranging from physical violence and threats to subtler but equally harmful mechanisms of psychological manipulation, emotional pressure, or economic dependency. Accordingly, forced marriage is not reducible to a singular act, but rather constitutes a process of compulsion, often embedded within complex family and community structures.

From a theoretical standpoint, forced marriage should be distinguished from related phenomena such as arranged marriages, early marriages, or child marriages. While these practices may overlap in practice, they are conceptually distinct: arranged marriages, for example, may

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<sup>2</sup> D. Miladinović Stefanović, „Kriminalizacija prinudnog zaključenja braka – iskustva pojedinih evropskih zemalja“, Zbornik radova Pravnog fakulteta u Nišu, Vol. 57, No. 80 (2018), 218.

occur with the full and voluntary consent of the individuals concerned, whereas child marriages are characterized by the legal incapacity of one or both parties to give valid consent.<sup>3</sup> The conflation of these categories risks obscuring the defining element of forced marriage – namely, the absence or invalidity of consent. In this respect, consent is not merely a formal legal requirement but represents the theoretical cornerstone of marriage as a social and legal institution.

The phenomenon is also situated within broader theoretical frameworks of social pathology and power relations. Forced marriage has been conceptualized as a mechanism of control that reinforces patriarchal structures and entrenched gender hierarchies. In this light, it is frequently associated with patterns of domestic violence, in which coercion serves to maintain dominance and subordination within intimate and familial relations. The coercive dynamics of forced marriage also align with theoretical understandings of structural violence, whereby individual autonomy is suppressed through social norms, cultural expectations, and institutionalized inequalities.

Another important dimension is the nexus between forced marriage and theories of exploitation and commodification. Scholars have observed that in certain contexts, marriage functions as a vehicle for the economic or social exchange of women, thereby reducing the institution to an instrument of subjugation rather than a voluntary partnership.<sup>4</sup> This perspective situates forced marriage within the broader discourse on human trafficking, where marital arrangements may conceal or facilitate exploitative practices. Such a theoretical framing underscores the dual nature of forced marriage as both a private family matter and a manifestation of wider systemic abuses.

Finally, the theoretical background of forced marriage must be grounded in human rights discourse. From a normative perspective, the right to freely choose one's marriage partner is not simply a private interest but a universal human right, integral to the protection of autonomy, dignity, and equality. The denial of this right, through coercion or compulsion, constitutes a violation that resonates across multiple fields of human rights theory – ranging from the right to private and family life, to gender equality, to the prohibition of inhuman and degrading treatment.<sup>5</sup>

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<sup>3</sup> A. Sabbe, M. Temmerman, E. Brems & E. Leye, „Forced Marriage: An Analysis of Legislation and Political Measures in Europe“, *Crime, Law and Social Change*, Vol. 62, No. 2 (2014), 173. See E. Beck-Gernsheim, „The Marriage Route to Migration of Border Artists, Transnational Matchmaking and Imported Spouses“, *Nordic Journal of Migration Research*, Vol. 1, No. 2 (2011), 63-65. See also M. Enright, „Choice, Culture and the Politics of Belonging: The Emerging Law of Forced and Arranged Marriage“, *The Modern Law Review*, Vol. 72, No. 3 (2009), 331-359; G. Gangoli, M. McCarry & A. Razak, „Child Marriage or Forced Marriage? South Asian Communities in North East England“, *Children & Society*, Vol. 23, No. 6 (2009): 418-429.

<sup>4</sup> M. Y. Mattar, „Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses“, *Fordham International Law Journal*, Vol. 26, No. 3 (2002), 730; K. Chantler, „Recognition of and Intervention in Forced Marriage as a Form of Violence and Abuse“, *Trauma, Violence & Abuse*, Vol. 13, No. 3 (2012), 178; S. Mijalković, „Vidovi i oblici trgovine ljudima“, *Temida, Časopis o viktimizaciji, ljudskim pravima i rodu*, Vol. 8, No. 2 (2005), 39.

<sup>5</sup> Forced marriage is a violation of fundamental human rights, especially the right of each individual to voluntarily and freely enter into marriage, which is contained in numerous international instruments, including: the Universal Declaration of Human Rights (Article 16), the International Covenant on Civil and Political Rights (Article 23), the International Covenant on Economic, Social and Cultural Rights (Article 10), and the European Convention on Human Rights (Article 12) and Protocol No. 7 with the European Convention (Article 5). V. Randelović, „Krivično delo prinudnog zaključenja braka u međunarodnom krivičnom pravu“, *Crimen, Časopis za krivične nauke*, Vol. 15, No. 1

This framing situates forced marriage at the intersection of private family relations and public human rights obligations, thereby reinforcing its significance as a subject of academic and legal inquiry.

## 2. Doctrinal and Comparative Legislative Analysis

The criminalisation of forced marriage within the legal framework of Bosnia and Herzegovina is addressed separately through the criminal codes of the Federation of Bosnia and Herzegovina,<sup>6</sup> the Brčko District,<sup>7</sup> and Republika Srpska.<sup>8</sup> While each of these laws contains a provision criminalising forced marriage as a standalone offence, a doctrinal analysis reveals significant differences in the formulation, scope, and structure of these provisions. These discrepancies expose both internal fragmentation and normative shortcomings when assessed in light of international legal standards.

In all three jurisdictions, the basic legal construction of the offence is consistent in its core elements. Forced marriage is defined as the act of *compelling another person to enter into marriage through the use of force or threats*. This legal formula, on its face, mirrors a classical understanding of coercion. However, the interpretive limitations of this construction become immediately evident upon closer scrutiny. The criminal codes fail to provide any elaboration on the nature of force or threat, leaving the terms vulnerable to narrow and literal judicial interpretation that does not fully capture the complex and often subtle mechanisms through which forced marriages occur. In particular, the absence of explicit recognition of psychological pressure, economic dependency, familial control, or cultural duress severely restricts the normative reach of these provisions. This omission is particularly problematic given that international legal instruments – most notably the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) – affirm that coercion encompasses not only physical force or overt threats but also more indirect or structural forms of compulsion.<sup>9</sup>

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(2024), 123; E. Ćorović & A. Ćorović, „Krivično delo prinudnog zaključenja braka iz člana 187a Krivičnog zakonika Srbije“, Godišnjak Fakulteta bezbednosti, No. 1 (2018), 328. These instruments confirm that marriage should only take place with the free and full consent of those intending to marry. Furthermore, most national constitutions and legal frameworks within the international community support this principle, recognizing the right to freely choose a marriage partner as a cornerstone of personal autonomy and human dignity.

<sup>6</sup> Krivični zakon Federacije Bosne i Hercegovine [Criminal Code of the Federation of Bosnia and Herzegovina] („Službene novine Federacije Bosne i Hercegovine“, br. 36/2003, 21/2004 – ispravka, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016, 75/2017, 31/2023 i 58/2025).

<sup>7</sup> Krivični zakon Brčko Distrikta Bosne i Hercegovine [Criminal Code of Brčko District of Bosnia and Herzegovina] („Službeni glasnik Brčko Distrikta Bosne i Hercegovine“, br. 19/2020 – prečišćen tekst, 3/2024 i 14/2024).

<sup>8</sup> Krivični zakonik Republike Srpske [Criminal Code of Republika Srpska] („Službeni glasnik Republike Srpske“, br. 64/2017, 104/2018 – odluka US, 15/2021, 89/2021, 73/2023, „Službeni glasnik Bosne i Hercegovine“, br. 9/2024 – odluka US BiH, „Službeni glasnik Republike Srpske“, br. 105/2024 – odluka US, 19/2025, „Službeni glasnik Bosne i Hercegovine“, br. 14/2025 – odluka US BiH i „Službeni glasnik Republike Srpske“, br. 31/2025).

<sup>9</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), Council of Europe; 2011. Treaty No.: CETS No. 210.

The scope of criminalisation is slightly broader in each code through the inclusion of an aggravated form involving the inducement of a person to travel abroad for the purpose of entering into a forced marriage. This cross-border dimension reflects an understanding of the transnational character of certain forced marriage practices, particularly where communities maintain strong diasporic or kinship ties abroad. Nevertheless, even this aggravated form retains the same narrow conception of coercion, and none of the criminal codes provide supplementary provisions to address the legal status of such marriages if concluded abroad, nor do they explicitly criminalise the conduct of third parties (such as family members or religious actors) who may facilitate the marriage once the victim is abroad.

The only significant legislative innovation among the three codes is found in the Criminal Code of the Federation of Bosnia and Herzegovina, which contains a distinct provision recognising forced marriage against a child as an aggravated offence. Article 215a(3) prescribes a more severe sanction – ranging from one to eight years of imprisonment – for perpetrators who compel a child into marriage. This provision brings the Federation’s legislation partially in line with international human rights standards, including the Convention on the Rights of the Child and the Istanbul Convention, both of which require enhanced legal protection for minors against early and forced marriages. By contrast, the criminal codes of Republika Srpska and the Brčko District contain no explicit provisions addressing the age of the victim, thereby leaving the issue to judicial interpretation and risking inconsistent application. This legislative silence is problematic, as international standards – reinforced by CEDAW (Art. 16(2)) – require States to establish clear and uniform minimum safeguards against child marriage. The absence of such clarity in two of Bosnia and Herzegovina’s jurisdictions not only fragments the protective framework but also undermines the principle of equality before the law, producing different levels of protection depending on territorial jurisdiction.

These divergences in formulation and coverage highlight a deeper structural issue within Bosnia and Herzegovina’s criminal justice architecture: the fragmentation of criminal law across multiple jurisdictions. While entity-level autonomy is a feature of the state’s constitutional arrangement, the result in this context is a legal landscape in which the degree of protection afforded to victims of forced marriage depends significantly on territorial jurisdiction. Such a condition undermines the principle of equality before the law and contradicts the obligations Bosnia and Herzegovina has undertaken under both the European Convention on Human Rights (ECHR)<sup>10</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>11</sup> both of which require the state to ensure effective and uniform legal protection against gender-based violence. This is not merely a matter of legislative technique but also of constitutional significance: the ECHR is directly incorporated into the Constitution of Bosnia and Herzegovina through Article II/2, while CEDAW, listed in Annex I, has direct domestic applicability. Accordingly, the current fragmentation of protection constitutes not only a legislative

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<sup>10</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), Council of Europe; 1950. ETS No.: 5.

<sup>11</sup> Convention on the Elimination of All Forms of Discrimination Against Women, United Nations; 1979. Treaty No.: A/RES/34/180.

shortcoming but also a breach of Bosnia and Herzegovina’s constitutional framework for the protection of fundamental rights.

From a doctrinal standpoint, the limited articulation of the offence of forced marriage in all three jurisdictions is notable not only for its minimalistic definition but also for its exclusive focus on punitive sanctions. None of the criminal codes under review offer any reference to civil consequences of forced marriage – such as the annulment of invalid marital unions – or procedural protections for victims, such as the right to legal aid, psychosocial support, or witness protection. Nor do they establish any mechanisms for state intervention in ongoing forced marriages, such as protective orders or restrictions on parental authority. The absence of such provisions reflects a formalistic approach to criminalisation, where the offence is isolated from the broader legal and social realities in which it takes place.

The laws also fail to reflect the transformative understanding of forced marriage that has emerged in recent years within international human rights law. Contemporary legal standards, particularly those articulated by CEDAW and the UN Special Rapporteur on violence against women and girls, increasingly emphasise the need to consider forced marriage not merely as an individual offence but as a form of structural violence. This includes consideration of the intersecting roles of gender, culture, poverty, and social control in sustaining the conditions under which forced marriages are perpetrated and tolerated. None of the domestic provisions in Bosnia and Herzegovina currently incorporate this intersectional understanding into either the definition of the offence or the design of state response mechanisms.

In this context, Directive (EU) 2024/1385 on combating violence against women and domestic violence is particularly important.<sup>12</sup> Given the fact that Bosnia and Herzegovina is an aspirant for membership in the European Union, it is necessary to harmonize its domestic legislation with this legal instrument of the European Union. A comparison between the provisions of the entity and district criminal codes and Article 4 of the Directive reveals both areas of alignment and significant gaps.

**Table 1:** Comparison between Criminal Codes in Bosnia and Herzegovina and Article 4 of Directive (EU) 2024/1385

Jurisdiction	Basic Offence	Aggravated Forms	Reference to Victim’s Age	Cross-Border Dimension	Concept of Coercion
Federation of BiH	Forcing a person to enter into marriage through force or threat (Art. 215a)	Forced marriage of a child (Art. 215a(3): 1–8 years imprisonment)	Explicit reference: child marriage criminalised as aggravated form	Criminalisation of inducement to travel abroad for forced marriage	Narrow: focuses on physical force/threat; hypnosis/intoxicants recognised; no mention of psychological/economic coercion

<sup>12</sup> Direktiva (EU) 2024/1385 Europskog parlamenta i Vijeća od 14. maja 2024. godine o suzbijanju nasilja nad ženama i nasilja u porodici, „Službeni list Europske unije“, Serija L, 25. 5. 2024.

<b>Jurisdiction</b>	<b>Basic Offence</b>	<b>Aggravated Forms</b>	<b>Reference to Victim's Age</b>	<b>Cross-Border Dimension</b>	<b>Concept of Coercion</b>
<b>Republika Srpska</b>	Forcing a person to enter into marriage through force or threat (Art. 207a)	None specific to child marriage	No explicit provision on age; left to interpretation	Criminalisation of inducement to travel abroad for forced marriage	Narrow: force includes hypnosis/intoxicants; excludes indirect coercion
<b>Brčko District</b>	Forcing a person to enter into marriage through force or threat (Art. 207a)	None specific to child marriage	No explicit provision on age; left to interpretation	Criminalisation of inducement to travel abroad for forced marriage	Narrow: force includes hypnosis/intoxicants; excludes indirect coercion
<b>State-level BiH Criminal Code</b>	Defines „force“ but does not contain a specific forced marriage provision	N/A	N/A	N/A	Same narrow definitional clause (hypnosis/intoxicants)
<b>Directive (EU) 2024/1385, Art. 4</b>	(a) Forcing an <b>adult or a child</b> to enter into marriage	Implicitly aggravated when child is victim (uniformly applicable)	Explicit inclusion of both adults and children	(b) Explicitly criminalises luring a person abroad with intent to force into marriage	Broad: obligation on Member States to criminalise conduct without restricting coercion to physical force only

Article 4 of the Directive (EU) 2024/1385 represents a significant consolidation of international legal standards concerning forced marriage. It obliges Member States to criminalise two core forms of conduct: (a) the act of forcing an adult or child into marriage, and (b) the practice of luring an adult or child to another country with the purpose of compelling them into marriage. The Directive (EU) 2024/1385 is important because it establishes uniform protection irrespective of the age of the victim, expressly recognising both adults and children as potential victims. Moreover, it reflects an understanding of the transnational dimension of forced marriages,

particularly within migrant and diasporic communities, by explicitly addressing cross-border luring. Although the Directive (EU) 2024/1385 does not define coercion exhaustively, its formulation aligns with broader international human rights instruments that recognise both direct and indirect forms of compulsion, thereby requiring Member States to ensure that their domestic definitions of force are sufficiently comprehensive.

When measured against Article 4 of the Directive (EU) 2024/1385, Bosnia and Herzegovina demonstrates partial compliance. On the one hand, all entity and Brčko District codes criminalise the act of compelling a person to enter into marriage and include an aggravated form involving inducement to travel abroad, thereby corresponding to both points (a) and (b) of the Directive (EU) 2024/1385. Furthermore, the Federation of Bosnia and Herzegovina goes beyond this by explicitly criminalising forced marriage of children, thereby reflecting international obligations. On the other hand, significant shortcomings remain. Neither the Republika Srpska nor the Brčko District codes expressly address the age of the victim, leaving minors insufficiently protected. More importantly, all domestic provisions adopt a narrow conception of coercion, confined largely to physical force, threats, hypnosis, or intoxicants, while failing to capture psychological, economic, and cultural pressures. This restricts the effective implementation of the Directive's requirements. Therefore, while Bosnia and Herzegovina has made legislative progress, its framework remains fragmented and substantively incomplete, and would require harmonisation and expansion to meet the Directive's standards fully.

The lack of harmonisation between substantive criminal regulations in Bosnia and Herzegovina is not only doctrinally problematic but also practically detrimental. It obstructs the development of coherent prosecutorial practice, leads to inconsistent sentencing, and contributes to underreporting due to the absence of clear, unified procedural standards. Victims may be less inclined to come forward if they perceive the justice system as fragmented, unresponsive, or unable to guarantee equal treatment regardless of location. In turn, this undermines both the credibility of the legal system and the deterrent effect of the criminal law.

Taken together, the current legislative provisions in Bosnia and Herzegovina represent an initial but incomplete step toward the meaningful criminalisation of forced marriage. The inclusion of the offence in each of the criminal codes is a necessary development and reflects some responsiveness to international obligations. However, the lack of harmonisation, the narrow conceptualisation of coercion, the inconsistent protection of children, and the absence of integrated victim protections demonstrate that the legal framework remains insufficient. A coherent, harmonised, and victim-centred legal approach – grounded in a broad and realistic understanding of coercion and consent – is necessary to transform these provisions from symbolic gestures into effective legal tools.

### **3. Intersection with Human Trafficking**



The relationship between forced marriage and human trafficking represents one of the most complex and underexplored dimensions of contemporary criminal law and human rights protection. While traditionally addressed as distinct legal categories, the two phenomena frequently overlap both in practice and in their underlying coercive dynamics. Human trafficking, as defined in Article 3 of the Palermo Protocol to the UN Convention against Transnational Organized Crime (2000),<sup>13</sup> entails the recruitment, transportation, transfer, harbouring, or receipt of persons by means of coercion, abduction, fraud, deception, abuse of power, or exploitation of vulnerability, for the purpose of exploitation. When marriage is used as the framework within which such coercion and exploitation occur, the boundaries between forced marriage and trafficking become blurred.

From a functional perspective, forced marriage often serves as a vehicle for exploitative practices that meet the definitional threshold of trafficking. Victims of forced marriage may be subjected to sexual exploitation, reproductive coercion, domestic servitude, or economic exploitation under the guise of marital obligations. In such contexts, the marital union becomes not merely a violation of personal autonomy but also a cover for sustained patterns of abuse and exploitation. The UN Special Rapporteur on trafficking in persons has explicitly identified forced marriage as both a potential purpose and a method of human trafficking, particularly in cases involving minors, displaced persons, and cross-border arrangements.<sup>14</sup>

Importantly, trafficking is not contingent upon the crossing of borders; internal trafficking may also occur. This means that even where a forced marriage is concluded entirely within Bosnia and Herzegovina, the elements of trafficking may nonetheless be present if the marriage serves as a mechanism for exploitation. Such recognition is crucial given the country's internal socio-economic disparities and the vulnerabilities of marginalised groups, including Roma communities, who face intersecting discrimination and socio-economic deprivation.

International and regional legal frameworks have gradually recognised forced marriage as falling within the ambit of trafficking. The Palermo Protocol does not explicitly mention marriage, but its broad definitional scope captures coercive marital arrangements that are used for the purpose of exploitation. Similarly, Directive 2011/36/EU on preventing and combating trafficking in human beings obliges Member States to criminalise exploitation in diverse forms, explicitly including sexual and labour exploitation, both of which may occur within forced marriages.<sup>15</sup> The Istanbul Convention (Art. 37) complements this framework by expressly obliging States Parties to criminalise forced marriage and to ensure protection measures that are functionally similar to those available to trafficking victims.

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<sup>13</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

<sup>14</sup> Trafficking in persons, especially women and children, Report of the Special Rapporteur on trafficking in persons, especially women and children, UN Doc. A/HRC/41/46, 2019.

<sup>15</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Official Journal of the European Union L 101/1, 15.4.2011.

The European Court of Human Rights has indirectly contributed to this recognition. In *Rantsev v. Cyprus and Russia* (2010),<sup>16</sup> the Court held that trafficking falls within the scope of Article 4 ECHR (prohibition of slavery and forced labour). Although the case did not concern forced marriage, its reasoning applies by analogy: where marriage operates as the means of exerting coercion and sustaining exploitation, states are under a positive obligation to prevent, investigate, and punish such practices. GREVIO monitoring under the Istanbul Convention has also identified forced marriage as a trafficking-related practice, stressing the need for states to ensure coherent coordination between anti-trafficking and anti-violence frameworks.<sup>17</sup>

Comparative jurisprudence demonstrates that states have increasingly acknowledged forced marriage as a form of trafficking. In Germany, courts have recognised instances of forced marriage within migrant communities as trafficking where the purpose was to subject women to ongoing sexual exploitation.<sup>18</sup> Similarly, in the United Kingdom, the interplay between the Forced Marriage (Civil Protection) Act 2007 and the Modern Slavery Act 2015 allows victims of forced marriage to be treated simultaneously as victims of trafficking where exploitation is present.<sup>19</sup> Such comparative examples highlight the need for Bosnia and Herzegovina to adopt an integrated interpretative approach, ensuring that cases of forced marriage with exploitative purposes are prosecuted not in isolation but as part of the broader trafficking regime.

The criminalisation of human trafficking in Bosnia and Herzegovina is fragmented across the Criminal Code of Bosnia and Herzegovina (state level),<sup>20</sup> the Criminal Code of the Federation of Bosnia and Herzegovina, the Criminal Code of Republika Srpska, and the Criminal Code of the Brčko District. While the four codes share certain core features, important divergences persist in scope, structure, and the treatment of forced marriage as a form of exploitation.

A notable strength of the Republika Srpska and Brčko District codes is their explicit recognition of forced marriage as a form of exploitation within the definition of trafficking.<sup>21</sup> This legislative clarity represents a progressive step that aligns with the Istanbul Convention (Art. 37) and international practice, which increasingly identifies forced marriage as a trafficking-related practice. By contrast, the Federation of Bosnia and Herzegovina (Art. 210a) and the state-level Criminal Code (Art. 186) do not mention forced marriage explicitly. Instead, they rely on broader formulations such as „any other exploitation“. While this could theoretically encompass forced

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<sup>16</sup> See *Rantsev v. Cyprus and Russia*, App. No. 25965/04, ECtHR 2010.

<sup>17</sup> See Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Bosnia and Herzegovina*, Secretariat of the Monitoring Mechanism of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Council of Europe, 2022.

<sup>18</sup> See generally D. D. Miladinović Stefanović, „Krivično delo prinudnog zaključenja braka u pravu Srbije – između pravne tradicije i novih pravnih izazova“, *Zbornik radova Pravnog fakulteta u Novom Sadu*, Vol. 54, No. 1 (2020), 289-307.

<sup>19</sup> See Forced Marriage (Civil Protection) Act 2007 c. 20; Modern Slavery Act 2015 c. 30.

<sup>20</sup> Krivični zakon Bosne i Hercegovine [Criminal Code of Brčko District of Bosnia and Herzegovina] („Službeni glasnik Bosne i Hercegovine“, br. 3/2003, 32/2003 – ispravka, 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015, 35/2018, 46/2021, 31/2023 i 47/2023).

<sup>21</sup> Criminal Code of Republika Srpska, art. 145(1); Criminal Code of Brčko District of Bosnia and Herzegovina, art. 207a(1).

marriage, the lack of explicit reference risks narrow judicial interpretation and uneven prosecutorial practice. The omission is particularly concerning at the state level, since Article 186 of the Criminal Code of Bosnia and Herzegovina governs international trafficking, which frequently overlaps with cross-border forced marriages.

All four codes provide for severe sanctions, ranging from a minimum of three to five years' imprisonment to long-term imprisonment.<sup>22</sup> Aggravated forms exist where the crime is committed against children, by officials, or as part of organised criminal activity. Sanctions for child trafficking are particularly strict in Republika Srpska (Art. 146) and the Federation of Bosnia and Herzegovina (Art. 210a(2)), where minimum penalties reach 10 years. From a human rights perspective, this severity demonstrates legislative commitment to combating trafficking; however, it also raises concerns of disproportion where forced marriage is prosecuted under trafficking provisions rather than under specific forced marriage offences, potentially leading to inconsistency in sentencing practices.

The codes vary in their definitions of exploitation. Republika Srpska and Brčko District adopt detailed enumerations, explicitly including forced marriage, forced sterilisation, and slavery-like practices. The Federation and state-level codes provide narrower enumerations, focusing on sexual exploitation, forced labour, and organ removal, while omitting explicit mention of forced marriage. This divergence creates unequal levels of protection depending on jurisdiction, contrary to Bosnia and Herzegovina's constitutional commitment to equal rights and its obligations under the European Convention on Human Rights.<sup>23</sup>

All codes contain provisions affirming that a victim's consent does not negate the offence.<sup>24</sup> This aligns with the Palermo Protocol and Directive 2011/36/EU, which recognise that consent is irrelevant when obtained through coercion or exploitation of vulnerability. Each code also provides a non-punishment clause protecting victims from prosecution for unlawful acts committed as a direct consequence of trafficking.<sup>25</sup> These provisions represent a positive incorporation of international standards and offer a foundation for victim-centred protection. However, their practical implementation remains uncertain given the lack of specialised prosecutorial guidelines and victim assistance mechanisms.

The Federation and state-level codes establish separate provisions for organised trafficking, prescribing minimum penalties of 10 years.<sup>26</sup> Republika Srpska and Brčko District instead aggravate sentences for trafficking committed by organised groups within the main

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<sup>22</sup> See Criminal Code of Republika Srpska, art. 146 and 146; Criminal Code of the Federation of Bosnia and Herzegovina, art. 210a and 210b; Criminal Code of Brčko District of Bosnia and Herzegovina, art. 207a, 207b and 207c.

<sup>23</sup> See European Convention on Human Rights, art. 14 and art. 1 of the Protocol 12.

<sup>24</sup> Criminal Code of Republika Srpska, art. 145(7); Criminal Code of the Federation of Bosnia and Herzegovina, art. 210a(9); Criminal Code of Brčko District of Bosnia and Herzegovina, art. 207a(7); Criminal Code of Bosnia and Herzegovina, art. 186(9).

<sup>25</sup> Criminal Code of Republika Srpska, art. 145(9); Criminal Code of the Federation of Bosnia and Herzegovina, art. 210a(10); Criminal Code of Brčko District of Bosnia and Herzegovina, implicit; Criminal Code of Bosnia and Herzegovina, art. 186(10).

<sup>26</sup> Criminal Code of the Federation of Bosnia and Herzegovina, art. 210b; Criminal Code of Bosnia and Herzegovina, art. 186a.

offence. Additionally, all codes criminalise users of services provided by trafficking victims, thereby extending liability beyond primary perpetrators.<sup>27</sup> This is consistent with Directive 2011/36/EU, though application in practice remains rare.

Despite formal compliance with international standards, the system suffers from several doctrinal and practical weaknesses:

(1) fragmentation (different formulations across jurisdictions undermine legal certainty and equality before the law);

(2) forced marriage inconsistencies (only Republika Srpska and Brčko District explicitly include forced marriage as exploitation, creating gaps in protection in Federation of Bosnia and Herzegovina and state-level law);

(3) limited victim support mechanisms (while the codes recognise victims' rights in principle, there is no uniform framework guaranteeing psychosocial support, witness protection, or compensation); and

(4) over-reliance on punitive sanctions (the strong emphasis on long-term imprisonment reflects a retributive rather than restorative approach, neglecting the preventive and protective dimensions required by the Palermo Protocol and Istanbul Convention).

To harmonise domestic law with international obligations and ensure effective protection, several reforms should be considered:

(1) explicitly harmonise definitions of exploitation across all four codes, ensuring that forced marriage, forced sterilisation, and similar practices are consistently included;

(2) integrate trafficking and forced marriage provisions, enabling prosecutors to pursue cumulative charges where both offences apply;

(3) adopt uniform victim protection mechanisms, including access to shelters, legal aid, psychosocial support, and residence permits for foreign victims; and

(4) develop prosecutorial guidelines clarifying when forced marriage should be prosecuted under trafficking provisions and when as a standalone offence; and

(5) strengthen cross-border cooperation, especially in view of Bosnia and Herzegovina's EU accession process, to address cases of transnational forced marriage and trafficking.

Recognising forced marriage as a potential form of human trafficking has profound implications for victim protection. Under international law, trafficking victims are entitled to a wide range of rights, including protection from prosecution for status-related offences, access to witness protection programmes, comprehensive psychosocial and legal support, and, in cross-

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<sup>27</sup> Criminal Code of Republika Srpska, art. 145(4); Criminal Code of the Federation of Bosnia and Herzegovina, art. 210a(6); Criminal Code of Brčko District of Bosnia and Herzegovina, art. 207a(4); Criminal Code of Bosnia and Herzegovina, art. 186(5).

border cases, temporary residence permits (Directive 2011/36/EU; Palermo Protocol). If forced marriage remains conceptually isolated, victims risk being excluded from these protections.

Ultimately, acknowledging the trafficking dimension of forced marriage enables a more accurate legal characterisation of the harm suffered by victims, strengthens the capacity of the justice system to address complex forms of coercion, and ensures compliance with Bosnia and Herzegovina's international obligations. By integrating forced marriage into the broader anti-trafficking framework, the legal system can move beyond a purely formalistic criminalisation and provide victims with the comprehensive support they are entitled to under international human rights law.

#### 4. Practical Examples and Case Studies

Although the offence of forced marriage has been present in the criminal legislation of Bosnia and Herzegovina for some time – with the notable exception of the Federation of Bosnia and Herzegovina, which only recently introduced explicit criminalisation – there is still no developed judicial practice applying these provisions. Courts have not built a body of case law directly addressing forced marriage. However, the absence of judicial practice does not mean the phenomenon is absent. On the contrary, numerous reported incidents demonstrate that forced and child marriages remain a persistent and under-recognised social problem, frequently misclassified or ignored by institutions.

One of the most striking examples concerns the case of a minor girl who was effectively „sold“ in exchange for a used car.<sup>28</sup> Her family arranged the marriage transaction for the price of a Golf II, treating her as an object of exchange rather than a rights-bearing individual. This case illustrates two crucial issues: the commodification of children in certain communities, and the failure of authorities to prosecute such arrangements under either forced marriage or human trafficking provisions. Instead of being treated as a crime, the incident was largely addressed as a „traditional practice“ and received only sporadic institutional attention after it appeared in the media.

A similar pattern was observed in cases where Roma girls were „sold“ for small sums of money, sometimes as low as 400 KM.<sup>29</sup> These arrangements were often framed by families as customary practices, but in reality, they amounted to the exploitation of minors through forced marriage. Victims were subjected to sexual and domestic servitude in the households of their „husbands“, a pattern that clearly falls within the definitions of both forced marriage and human

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<sup>28</sup> See Slučaj maloljetničkih brakova u BiH: Prodali djevojčicu za Golfa II, Available at: <https://n1info.ba/vijesti/slucaj-maloljetnickih-brakova-u-bih-prodali-djevojnicu-za-golfa-ii/> (25.08.2025).

<sup>29</sup> See Trgovina ljudima pod maskom tradicije: Djevojčice prodaju za 400 KM, Available at: <https://etrafika.net/dosije/36369/trgovina-ljudima-pod-maskom-tradicije-djevojnice-prodaju-za-400-km/> (25.08.2025).

trafficking. Yet, prosecutions were almost non-existent, as authorities tended to defer to community norms or treat the cases as private family matters.

In another documented report, journalists described forced marriages as an ongoing „reality of BiH society“.<sup>30</sup> The investigation showed that many girls – especially in rural or marginalised communities – were pressured into unions without genuine consent. Despite the criminal law framework, such practices rarely reached the courts because victims were reluctant to report them, fearing retaliation from their families and lacking confidence in the justice system. This reflects the broader issue identified in the doctrinal analysis: the gap between formal criminalisation and the social reality in which forced marriage is normalised and protected by silence.

Perhaps most concerning are reports highlighting that forced and child marriages are largely invisible to the institutional system.<sup>31</sup> Schools, centres for social work, and police often fail to detect or act upon clear signs of coercion. In many cases, teachers or neighbours were aware of the situation but felt unable or unwilling to intervene, citing either cultural sensitivity or lack of procedural clarity. This systemic inaction perpetuates the invisibility of victims and enables perpetrators to operate with impunity. It also underscores the consequences of the fragmented legislative framework: without harmonised definitions and clear protocols, institutions lack the tools and confidence to respond effectively.

What unites these examples is not only the absence of effective prosecution but also the structural vulnerability of the victims. Most of the documented cases involve children, disproportionately from Roma or impoverished communities, who face intersecting discrimination, poverty, and marginalisation. Their lack of access to legal remedies, psychosocial support, or safe alternatives renders them especially vulnerable to being coerced into marriages. The combination of weak institutional responses, cultural justifications, and fragmented legislation results in a system where forced marriages persist largely unchecked.

These examples demonstrate that the lack of court practice is itself symptomatic of a deeper problem: the disconnect between law and reality. On paper, Bosnia and Herzegovina criminalises forced marriage; in practice, the phenomenon continues under the radar of judicial institutions, sustained by tradition, poverty, and social tolerance. Unless institutions begin to treat these cases as criminal offences – supported by clear prosecutorial guidelines and victim-centred mechanisms – forced marriage will remain hidden in plain sight, with victims deprived of the protection that the law formally guarantees them.

## 5. Conclusion

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<sup>30</sup> See *Prisilni brakovi realnost bh. društva*, Available at: <https://etrafika.net/drustvo/38949/prisilni-brakovi-realnost-bh-drustva/> (25.08.2025).

<sup>31</sup> See *Prisilni brakovi, uglavnom nevidljivi za sistem*, Available at: <https://etrafika.net/dosije/djeca-imaju-pravo/84420/prisilni-brakovi-uglavnom-nevidljivi-za-sistem/> (25.08.2025).

The criminalisation of forced marriage in Bosnia and Herzegovina represents an important but incomplete step toward safeguarding fundamental human rights. While the inclusion of the offence in entity and district criminal codes reflects responsiveness to international standards, significant shortcomings persist. The narrow definitions of coercion, the lack of uniform protection for minors, and the absence of integrated victim support mechanisms reveal a legal framework that remains more symbolic than effective. The fragmentation of criminal legislation across multiple jurisdictions further undermines the principle of equality before the law, leaving the degree of protection dependent on territorial boundaries rather than the universality of rights.

Equally important is the fact that Bosnia and Herzegovina has no developed judicial practice in prosecuting forced marriage. The absence of case law does not indicate that the phenomenon is rare; rather, documented examples of child marriages, sales of girls under the guise of tradition, and cases of commodification of minors demonstrate that forced marriage remains a lived reality. These practices, often tolerated or overlooked by institutions, reveal a profound gap between legal norms and social reality. Victims, particularly minors and members of Roma communities, continue to face systemic invisibility, weak institutional responses, and the absence of meaningful protection.

A comparative analysis demonstrates that Bosnia and Herzegovina has only partially aligned with international obligations under the Istanbul Convention, CEDAW, and the European Convention on Human Rights, as well as with the emerging *acquis* of the European Union, particularly Directive (EU) 2024/1385. While the Federation of Bosnia and Herzegovina has made some progress by criminalising child marriage as an aggravated form, neither Republika Srpska nor the Brčko District has adopted similar safeguards, resulting in uneven protection. Moreover, the domestic provisions' failure to recognise indirect forms of coercion such as psychological pressure, economic dependency, or cultural norms limits their capacity to address the social realities of forced marriage.

The intersection of forced marriage with human trafficking further illustrates the inadequacy of current legislation. Although Republika Srpska and Brčko District codes explicitly recognise forced marriage as a form of exploitation under trafficking offences, the Federation and state-level provisions do not, thereby creating gaps in protection and inconsistent prosecutorial practice. This fragmented approach risks excluding victims of forced marriage from the broader protective regime available to trafficking victims under international and EU law.

Moving forward, Bosnia and Herzegovina must prioritise legislative harmonisation and the adoption of a victim-centred approach. This requires: (i) broadening the definition of coercion to reflect the complexity of forced marriage, (ii) ensuring explicit and uniform criminalisation of forced marriage against minors, (iii) recognising forced marriage as a form of exploitation in all trafficking provisions, and (iv) integrating criminalisation with robust protection measures, including psychosocial support, legal aid, and preventive mechanisms. Such reforms are not merely legislative refinements but constitutional and international obligations, given the direct applicability of the ECHR and CEDAW in the domestic legal order.

Ultimately, prosecuting forced marriage in Bosnia and Herzegovina requires moving „between law and reality“. Documented cases show that while the offence exists in legislation, it remains invisible in judicial practice. Only by closing this gap – through harmonisation, prosecutorial guidance, and victim-centred support – can Bosnia and Herzegovina ensure that victims’ rights are safeguarded in practice and that its legal system aligns with European and international standards. In the context of EU accession, this alignment is not only a legal imperative but also a political and moral commitment to the protection of human dignity, equality, and autonomy.

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## **МЕЃУ ПРАВОТО И РЕАЛНОСТА: ИНКРИМИНИРАЊЕ НА ПРИНУДНИОТ БРАК ВО БОСНА И ХЕРЦЕГОВИНА**

### **Апстракт**

Овој труд ја анализира кривичната одговорност за принудниот брак во Босна и Херцеговина, поставувајќи го феноменот во неговите теоретски, доктринални и компаративни правни димензии. Се истакнува фрагментираноста на кривичноправната рамка меѓу Федерацијата на Босна и Херцеговина, Република Српска и Брчко Дистрикт, со значајни разлики во дефинициите, опсегот и заштитата на жртвите. Иако криминализацијата на принудниот брак претставува позитивен чекор, тесното сфаќање на присилата, недоследното третирање на малолетници и отсуството на интегрирана поддршка за жртвите ја намалуваат ефикасноста на заштитата. Анализата исто така ја разгледува врската меѓу принудниот брак и трговијата со луѓе, нагласувајќи дека недоследното признавање во различни јурисдикции го ограничува пристапот до пошироките механизми на заштита предвидени за жртвите на трговија. Трудот заклучува дека хармонизацијата на

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законодавството, поширокото разбирање на присилата и усвојувањето на жртвоцентрични мерки се клучни за Босна и Херцеговина да ги исполни своите уставни и меѓународни обврски и да се усогласи со правната тековина на Европската Унија.

**Клучни зборови:** принуден брак, трговија со луѓе, Босна и Херцеговина, кривично право, заштита на жртви.