

Criminal Liability for Coercing A Woman into Marriage or Interfering with Her Right to Marry: Comparative Perspectives and Prospects for Improving National Legislation

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Received: 04 Feb 2026 | Received Revised Version: 20 Feb 2026 | Accepted: 06 Mar 2026 | Published: 25 Mar 2026

Volume 08 Issue 03 2026 | Crossref DOI: 10.37547/tajpslc/Volume08Issue03-05

Abstract

This article examines criminal liability for coercing a woman into marriage or continued marital cohabitation, as well as for obstructing her right to marry. It further offers a comparative analysis of the relevant legislative approaches in Bulgaria, the Republic of Korea, the Netherlands, San Marino, Azerbaijan, Georgia, Kyrgyzstan, Armenia, Belarus, Kazakhstan, Latvia, Lithuania, Ukraine, and Estonia. The study substantiates the need to differentiate criminal liability within the relevant provision of national legislation by distinguishing between two separate offenses: (1) coercion of a woman into marriage or continued marital cohabitation, or obstruction of her right to marry; and (2) abduction of a woman against her will for the purpose of marriage.

Keywords: Forced marriage; bride kidnapping; coercion into marriage; women's rights; gender-based violence; criminal liability; comparative criminal law; CEDAW; freedom of marriage; Uzbekistan.

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Cite This Article: Ibrokhimova Zulkhumor Salihovna. (2026). Criminal Liability for Coercing A Woman into Marriage or Interfering with Her Right to Marry: Comparative Perspectives and Prospects for Improving National Legislation. *The American Journal of Political Science Law and Criminology*, 8(03), 27–31. <https://doi.org/10.37547/tajpslc/Volume08Issue03-05>

1. Introduction

Article 136 of the Criminal Code, which establishes liability for coercing a woman into marriage or preventing her from marrying, is located in Chapter VI ("Crimes against the Freedom, Honor, and Dignity of the Individual") of Section I ("Crimes against the Person") of the Special Part of the Criminal Code.

Forced marriage should be understood as a union in which one or both parties have not given full, free, and informed consent to the marriage[1]. It also includes situations in which one of the spouses seeks to dissolve

the marriage but is unable to do so because of coercion or other forms of pressure[2]. Forced marriage may involve both adults and minors[1].

Forced marriage takes many forms, including marriages concluded without consent in situations involving slavery or human trafficking; child marriage; exchange or arranged marriages; levirate, that is, the coercion of a widow to marry a relative of her deceased husband; abduction for the purpose of marriage; procuring; marriage used as a means of settling disputes; sham marriages; marriages contracted for the acquisition of citizenship; and marriages involving financial

consideration, including bride price or other monetary transactions. Forced marriage may also be used to preserve endogamous marital practices within migrant communities or to facilitate access to migration-related documentation. In post-conflict settings, armed groups may use forced marriage as a survival strategy or as a means of coping with economic deprivation[3].

The abduction of a woman against her will for the purpose of marriage constitutes a distinct and aggravated form of coercion. It is characterized by the unlawful seizure of the victim, her forced removal from her usual environment, and/or her unlawful confinement in a place to which she may have gone voluntarily or as a result of deception by the offender.

In such cases, coercion may take the form of physical violence, threats, or intimidation. Situations involving the exploitation of the victim's vulnerable or helpless condition are also common. The absence of the woman's valid consent is an essential element of this offense.

A review of the relevant academic literature reveals divergent, and at times conflicting, approaches to the legal characterization of abduction for the purpose of marriage. For example, A. E. Dugin argues that such conduct should be decriminalized and reclassified as an administrative offense punishable by a substantial fine. According to this view, criminal liability should arise only where the abduction is committed for a purpose other than marriage, such as obtaining financial gain, in which case a full criminal investigation would be justified. On that basis, the author proposes excluding abduction for the purpose of marriage from the category of criminal offenses[4].

In our view, such an approach creates legal inconsistency and normative ambiguity in the treatment of non-consensual abduction. More specifically, it produces a situation in which abduction for non-marital purposes is treated as a criminal offense, while abduction for the purpose of marriage is reduced to an administrative violation. Such a dual framework undermines both the coherence of criminal law and the effectiveness of legal protection.

Moreover, the violent abduction of a woman for the purpose of marriage constitutes a clear violation of Article 2 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In particular, that provision requires States Parties to take "all appropriate measures, including legislation, to

modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

Article 5 of CEDAW further requires States to take all appropriate measures to "modify the social and cultural patterns of conduct of men and women, with a view to eliminating prejudices and customary and all other practices based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women."

Article 16 of the Convention expressly affirms the principle of free choice of spouse and equality of rights in marriage:

"States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and, in particular, shall ensure, on a basis of equality of men and women: (a) the same right to enter into marriage; (b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) the same rights and responsibilities during marriage and at its dissolution." [5]

In its objective features, the abduction of a woman for the purpose of marriage without her consent closely resembles the offense of kidnapping under Article 137 of the Criminal Code. A. V. Naumov argues that kidnapping as a criminal act "consists of two elements: abduction and unlawful deprivation of liberty, which manifest as an ideal concurrence of offenses, since the temporal execution of both acts coincides." [6] L. L. Kruglikov, in turn, defines kidnapping as "the intentional removal and displacement of a person from their natural social environment against their will, with the purpose of retaining them for a certain period through deprivation of liberty" [7]. Some scholars also note that kidnapping consists of four continuously executed acts: "seizure, separation, movement, and detention" [8].

A comparative analysis of the elements of abduction for the purpose of marriage without a woman's consent under Article 136 and kidnapping under Article 137 reveals a number of important similarities. In criminal-law terms, the protected legal interest in kidnapping is personal security; more broadly, the offense protects freedom, honor, and dignity; and its direct object is the individual's physical liberty, including freedom of movement [9].

A woman's physical liberty is likewise violated in cases of abduction for the purpose of forced marriage. In both offenses, the conduct involves removing a person from the place where she is staying or living, transporting her to another location against her will, and unlawfully detaining her there[10].

Accordingly, the actus reus of abduction for the purpose of marriage without a woman's consent under Article 136 consists of three coercive acts:

- 1) removing the victim from her immediate social environment, for example, taking the bride from the home where she lives with her family;
- (2) transporting the abducted woman to a place where she will be detained, for example, the residence of the perpetrator, his relatives, or another designated location; and
- (3) detaining the victim in such a way as to prevent her from leaving or returning to her original place of residence.

The method used to commit the offense, as well as the duration of the unlawful detention, whether minutes, hours, days, or even months, is not decisive for legal classification.

The offense should therefore be regarded as completed from the moment the victim's unlawful detention begins.

The mens rea of abduction for the purpose of marriage without a woman's consent under Article 136 is direct intent: the perpetrator understands that he is abducting a person against her will and wishes to do so[10]. In addition, the purpose of the act is a mandatory element of the offense, namely the intention to marry the abducted woman.

Overall, although from a formal legal perspective abduction for the purpose of marriage without a woman's consent may be regarded as a specific form of kidnapping, law-enforcement practice draws an important distinction between these offenses. This is because, in cases arising under Article 136, practice often proceeds on the assumption that the woman consented in advance, even if her parents did not. In such situations, the conduct is frequently perceived as having a predominantly religious or traditional character. These acts are often aimed at securing parental approval or reducing the financial costs associated with wedding

ceremonies. Typically, the victim does not file a complaint with law-enforcement authorities and shows no interest in initiating criminal proceedings. In some cases, law-enforcement bodies themselves treat such conduct as part of a premarital customary ritual[11].

Chapter 4 of the Criminal Code of Bulgaria, entitled "Crimes against Marriage, Family and Youth," establishes criminal liability for the abduction of a woman for the purpose of coercing her into marriage (Article 177), as well as for demanding a bride price or dowry in exchange for consent to the marriage of a daughter or other female relative (Article 178). It should also be noted that abduction for the purpose of marriage is criminalized in the legislation of the Republic of Korea (Article 291), the Netherlands (Article 281), and San Marino (Article 176)[11].

Article 176-1 of the Criminal Code of the Republic of Azerbaijan ("Coercion of a Woman into Marriage") provides for punishment in the form of a fine ranging from 2,000 to 3,000 manats or imprisonment for up to two years. If the act is committed against a person below the legal age for marriage, the offender may be punished by a fine ranging from 3,000 to 4,000 manats or imprisonment for up to four years[12].

Provisions criminalizing bride kidnapping or coercion into marriage by such means are also found in the criminal legislation of Georgia (Article 150¹, "Coercion into Marriage"), Kyrgyzstan (Article 155, "Abduction of a Woman for the Purpose of Coercion into Marriage, Coercion into Marriage, or Obstruction of Marriage"), and Turkmenistan (Article 127, "Abduction of a Woman for the Purpose of Entering into De Facto Marital Relations").

In particular, Article 155 of the Criminal Code of the Kyrgyz Republic establishes criminal liability for "the abduction of a woman for the purpose of coercion into marriage, coercion of a woman into marriage, or obstruction of marriage."

In addition, the criminal legislation of Armenia, Belarus, Kazakhstan, Latvia, Lithuania, Ukraine, and Estonia establishes liability for the general offense of coercion. For example, under Article 185 of the Criminal Code of the Republic of Belarus ("Coercion"), compelling a person to perform or refrain from performing an act by threatening violence against that person or their relatives, destruction or damage to property, dissemination of defamatory information, disclosure of confidential

information, or other harm to rights, freedoms, and legitimate interests gives rise to criminal liability where the conduct does not amount to a more serious offense[13]. This provision may also be applied in cases involving coercion of a woman into marriage.

In such situations, decisions of fundamental importance to a woman's life are effectively made by the perpetrators of the abduction, as well as by their relatives and associates. In many cases, bride kidnapping is accompanied by both physical coercion and psychological pressure. Elder relatives of the perpetrator often attempt to persuade the victim to submit. Such practices cannot be justified as an expression of custom or tradition, because the abduction of a woman without her prior consent has no legitimate connection to cultural practice. Historically, bride abduction occurred in situations where the families of the couple opposed the marriage or demanded an excessive bride price that the groom's family was unable to pay.

As noted above, Article 136 of the Criminal Code currently consists of a single provision covering three forms of conduct: (1) coercing a woman into marriage or into continued marital cohabitation; (2) abducting a woman against her will for the purpose of marriage; and (3) preventing a woman from marrying.

The foregoing analysis shows that these acts differ substantially in their degree of social danger. Coercion into marriage, coercion to continue marital cohabitation, or obstruction of marriage under this article is predominantly carried out through psychological pressure and, although serious, does not reach the same level of gravity. By contrast, abducting a woman against her will for the purpose of marriage is a significantly more dangerous act. It often involves physical force, unlawful deprivation of liberty, and, in some cases, rape or other serious offenses. It also has a profound psychological impact on the victim, undermines her autonomy and freedom of choice, and may lead to severe social stigmatization within her community, thereby jeopardizing her future.

In light of the above, Article 136 of the Criminal Code should be divided into two separate parts. The first part should establish liability for coercing a woman into marriage or continued marital cohabitation, as well as for preventing her from marrying. The second part should provide for more severe criminal liability for abducting a woman against her will for the purpose of marriage.

Accordingly, Article 136 of the Criminal Code could be restated as follows:

“Coercing a woman into marriage or continued marital cohabitation, or preventing a woman from marrying,

shall be punishable by a fine of up to twenty-five times the basic calculation value, or by mandatory community service for up to three hundred and sixty hours, or by correctional labor for up to three years.

Abducting a woman for the purpose of marriage against her will

shall be punishable by restriction of liberty for a term of one to three years or deprivation of liberty for up to three years.”

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