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SPECIAL MEASURES FOR SEX OFFENDERS AND POTENTIAL HUMAN RIGHTS VIOLATIONS**

Summary

Child sexual abuse has attracted enormous attention and occupied significant media space in recent decades. This increased attention has resulted in the creation of strategies aimed at responding to sexual abuse in general, and has been motivated by both the need to prevent reoffending and the desire to adequately respond to the expectations of the wider public. Measures aimed at responding to sexual offenses have become fertile ground for the introduction of various innovations. This may result in the violation of sex offenders' human rights, and any state based on the rule of law should not allow this. This paper is devoted predominantly to the analysis of the Croatian and Serbian current legal frameworks related to the application of specific measures aimed at sex offenders to establish whether these frameworks are aligned with the relevant human rights protection standards. It has been established that the level of compliance of the two national legislations with the international legal framework is high although there is room for additional corrections. The objective of the paper is to give recommendations for harmonizing the above area with the modern legal acquis, and primarily with the standards established through the case law of the European Court of Human Rights.

Keywords: sexual offenses, registries, supervision, human rights, European Court of Human Rights.

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POSEBNE MERE ZA SEKSUALNE PRESTUPNIKE I MOGUĆE POVREDE LJUDSKIH PRAVA

Sažetak

Seksualno zlostavljanje, osobito dece, poslednjih decenija privlači veliku pažnju građana i medija, usled čega je osmišljavanje strategija za regovanje na ovaj fenomen motivisano ne samo potrebom da se on suzbije i drži pod kontrolom, već i željom da se adekvatno odgovori na očekivanja javnog mnjenja. Reagovanje na ponašanje seksualnih prestupnika stoga predstavlja oblast u kojoj se obilato uvode raznovrsni noviteti, i to neretko bez adekvatne naučne i iskustvene argumentacije. Ovakav pristup može rezultirati narušavanjem ljudskih prava seksualnih prestupnika, iako država zasnovana na vladavini prava to ne sme tolerisati. Rad je prevashodno posvećen analizi hrvatskog i srpskog pozitivnopravnog okvira koji se odnosi na primenu specifičnih mera usmerenih ka seksualnim prestupnicima, a kako bi se ustanovilo da li su ovi okviri usklađeni sa internacionalnim standardima u sferi zaštite ljudskih prava. Ustanovljeno je da je nivo usklađenosti dvaju nacionalnih prava sa međunarodnim pravnim okvirom visok, iako postoji prostor za dalja usavršavanja. Cilj rada jeste da se osmisle izvesne preporuke u cilju usaglašavanja navedene materije sa savremenim pravnim tekovinama, te u prvom redu sa principima ustanovljenim u praksi Evropskog suda za ljudska prava.

Ključne reči: seksualni delikti, baze podataka, nadzor, ljudska prava, Evropski sud za ljudska prava.

1. Introductory Considerations

Until the 1970s, the topic of sexual abuse of children received sporadic attention as was considered a relatively rare phenomenon (Finklelhor & Araji, 1986, p. 15). The first extensive research on the prevalence of child sexual abuse conducted during the 1970s and 1980s revealed intriguing data. A survey conducted with male respondents from the San Francisco County in the United States (hereinafter: the USA) has indicated that as many as 38% of the survey participants had experienced some form of sexual abuse before the age of 18 (Nurse, 2020, p. 62). In 2014, an extensive survey on the violence against women in Europe confirmed, *inter alia*, that 12% of the respondents under the age of 15 had experienced some form of sexual violence perpetrated by an adult (FRA, 2015, p. 121).

It has been pointed out in the literature that there is a connection between sexual victimization during childhood and various negative consequences such as anxiety, depression and suicidal thoughts (Deblinger *et al.*, 2015).

When it comes to the informal and formal responses to sexual offenses, and especially sexual abuse of minors, the understanding of this topic is undeniably burdened by numerous prejudices. One of the prejudices is that sexual abuse predominantly involves an older man unknown to the victim, while the abused child is primarily an infant, approached by the offender in a public place. On the other hand, scientific literature states that in most cases the perpetrator is already known to the victim, and that many sex offenders are young, even minors (Horowitz, 2015, p. xii). A widespread prejudice is that sex offenders are mostly unrepentant multi-recidivists, and that they should all be treated the same way, even though they could have diametrically different needs (Matijašević Obradović & Dragojlović, 2020, p. 110). Along with the preconception that recidivism among sex offenders is inevitable, there is also the presumption that the rate of recidivism among this population is significantly higher than among perpetrators of other crimes, although scientific studies indicate that this is not true. In support of this, a study conducted in the USA indicated that the recidivism rate among 9.000 sex offenders over the three years following the conviction was 5.3%, while a similar Canadian study, which included 30,000 offenders from North America and the United Kingdom, indicated a recidivism rate of 14% over a four to six-year period (Levenson *et al.*, 2007, p. 142).

In addition to the deep-rooted prejudices, the system is inevitably influenced by the public's strong emotional response to the phenomenon of child sexual abuse. It is also interesting that the rate of sexual offenses has mostly been decreasing since the 1990s, although the media interest, with a focus on sensationalism, has only increased (Cochran *et al.*, 2021, p. 79; Kovačević, 2021, p. 74). In such a climate, the idea to preventively supervise dangerous sex offenders first came into life in the USA, as the result of "moral panic" and "penal populism" demands, and has subsequently spread to Europe (Mrvić-Petrović, 2015a, p. 211). Such an approach was also influenced by the mass media covering the topic of "sex monsters", after the discovery of the *networks* of *pedophiles* and brutal murders of minor victims in the last decades of the 20th century in Great Britain, France, Belgium and other countries (Mrvić-Petrović, 2015a, p. 212).

Unlike the USA, European countries do not allow open access to sex offender databases, nor are there measures aimed at informing the public about their whereabouts. For the most part, data on sex offenders is available only to the police and the judiciary. The exceptions are Poland and North Macedonia, which have publicly available sex offenders databases. However, in Poland, the general

public can only access data on offenders convicted of the gravest sex offenses. Therefore, in Europe, the confidentiality of criminal records data is generally insisted upon, whereby each European country decides, according to its own circumstances and needs, on whether to establish a sex offenders register. The laws of numerous European countries provide for the possibility of applying various measures with the primary purpose of monitoring sex offenders. Supervision is also applied after the completion of criminal sanctions, and the restriction of freedom can vary. In this regard, surveillance measures may be necessary, as part of a proactive and strategically designed approach to prevent the victimization of children, and consequently restrictions on human rights and freedoms in a given context may be completely legitimate and efficient.

Apart from the fact that such rigorous supervision and making sex offenders databases available to the general public is in contradiction to the protection of the right to privacy, it may also have detrimental effects. Thus, research in the USA indicates that offenders whose data has been published have faced the following consequences: loss of job and inability to advance in the workplace, loss of residence, public insults, expulsion from public places and harassment in public and by phone/email (Tewksbury, 2005, p. 70). Although the registration, public notification and supervision were established with the purpose of protecting children and adults, some of the listed consequences could be related to the offenders' social withdrawal, which could make it even more difficult for them to access a support system and could ultimately contribute to reoffending.

Bearing in mind the above, the following part provides a normative-comparative analysis of the relevant Croatian and Serbian regulations in the field of responding to sexual crimes to examine the compliance of the above national legal frameworks with the standards arising from the European Court of Human Rights practice.

2. Croatian and Serbian Current Legal Frameworks in the Field of Combating Sexual Crimes

2.1. Croatia

While Croatia still does not have a special sex offenders database established, there is a universal criminal records database maintained by the Ministry of Justice. However, the Law on Legal Consequences of Conviction, Criminal Records and Rehabilitation, under Article 13(4), stipulates that courts, public authorities and institutions involved in the procedures for the protection of the

rights and interests of the child, may, upon a reasoned request, be provided with certificates on convictions for offenses such as child sexual abuse and exploitation, and other similar crimes listed in the Criminal Code of the Republic of Croatia. At the same time, the Law stipulates, under Article 14(1), that no one has the right to require citizens to submit their criminal records data, with an exception of the aforementioned special certificates that the employer must obtain before hiring a person who will be entrusted with tasks and duties involving children.

It should be emphasized that the criminal records data are to be permanently deleted after the expiration of the deadlines specified by the Law. Legal rehabilitation occurs automatically after the expiration of the appropriate deadlines, the duration of which is determined by the type of sanction and the duration of the imposed prison sentence. However, for those convicted of sexual crimes against minors, rehabilitation occurs after the expiration of the double duration deadlines compared to those foreseen for the rehabilitation in case of persons sentenced to the same criminal sanctions, but for other offenses (Article 19(8)). After the expiration, the person is considered unconvicted, while the rehabilitated person himself has the right to deny his conviction.

Furthermore, appropriate "special obligations" may be imposed on sex offenders including: prohibition of visiting certain places, facilities or events that may provide an opportunity or incentive for reoffending; prohibition of associating with a certain person or group of persons; prohibition of employment, teaching or accommodation of certain persons and regular reporting to the probation service, social welfare services, court, police or other relevant authority, all in accordance with the Criminal Code, Art. 62(2). However, unlike the current Serbian law solution, it is the court that establishes special obligations. Special obligations are not imposed according to the principle of automaticity, and the legislator has foreseen that unreasonable obligations may not be imposed, including obligations that offend one's dignity.

In Croatia, there is the possibility of imposing protective supervision if the offender needs the support and guidance of a probation officer to refrain from reoffending and to be integrated more easily into society. Protective supervision includes: reporting to the probation officer, seeking the judge's consent for traveling abroad and informing the probation officer of any change of employment or address (Criminal Code, Art. 64). As a rule, the court orders protective supervision with a conditional sentence, community service and conditional release, for all sentences exceeding six months duration imposed on offenders under 25 years of age (Criminal Code, Art. 64(3)).

On the other hand, as a measure of additional supervision over those who have served a full prison sentence, as part of the "safety measures", the Croatian

criminal legislation has introduced a measure of protective supervision. This special protective supervision can be imposed by the court if the offender has received a prison sentence of five or more years for a premeditated crime, two or more years for a premeditated violent crime, or a prison sentence for sexual crimes against minors, all in accordance with Article 76 of the Criminal Code. For perpetrators of crimes against children, the probationary period is one to five years, and the court can extend this period for one additional year at the proposal of the probation service if there is a risk of reoffending. Every year, the court reviews the justification for continued application of this measure. The review can also be initiated by the offender himself, but not before six months have passed since the last review. The literature points out that this measure was designed to provide post-penal care and prevent reoffending, with the annotation that its practical application thus far has been extremely scarce, and it is impossible to evaluate its scope and results (Vuletić, Salitrežić & Sajter, 2021, p. 555).

2.2. Serbia

Serbia established their special sex offenders register in 2013, under the Law on Special Measures for Preventing Sexual Offenses against Minors. The Law is also known as "Marija's Law", since the initiative for its adoption was directly related to the tragic death of eight-year-old Marija Jovanović. The database is administered by the Administration for the Execution of Criminal Sanctions. The legislator enumerates the crimes from the Criminal Code of the Republic of Serbia that condition the application of special measures, including: rape, child sexual abuse, illicit sexual acts, intermediation in prostitution, and use of computer networks or communication by other technical means for the commission of sexual crime against a minor. Experts have justifiably expressed doubts as to why the Law does not also apply to other offenses against minors such as human trafficking, incest and sexual harassment (Miladinović-Stefanović, 2014; Đorđević, 2018, p. 120). It should be emphasized that Marija's Law applies only to adult perpetrators of sexual crimes against minors.

A significant innovation is the introduction of certain special measures for sex offenders whose victims were minors. Article 7 of Marija's Law foresees that, following the prison sentence for the enumerated crimes, special measures are implemented in the form of: mandatory reporting to the police and the Administration for the Execution of Criminal Sanctions/Probation Services; bans on visiting places where minors gather (kindergartens, schools and similar); mandatory visits to professional counseling centers and institutions; mandatory notification of authorities on changes of residence, place of residence or workplace

and mandatory notification of travel abroad. Measures can be implemented over a period of no longer than 20 years following the end of the prison sentence, which implies that they are reserved only for those sentenced to prison. The question can be raised as to why special measures could not be applied in case of other criminal sanctions imposed, given that the legislator emphasized that the measures should serve to prevent reoffending.

At the end of every four years of applying the measures, the court *ex officio* decides on the need for their continued implementation, whereby the person to whom the measures refer to can also submit a request for review every two years. Article 8 of Marija's Law stipulates that the mandatory reporting measure implies the offender's duty to report to the police and the probation officer every month and no later than by the 15th of the current month. In addition, the offender is required to personally notify the police and the Probation Service of any change of residence or workplace within three days from the date of the change, with the same obligation also relating to a notification of travel abroad, whereby the police must be notified no later than three days before the planned trip, with the submission of information about the country of destination and about the place and length of stay outside Serbia. If the convicted person ignores the prescribed restrictions, i.e., if he fails to fulfill his duties, he could be charged with a misdemeanor and punished by imprisonment for a period of 30 to 60 days.

It could be argued that Article 10 of Marija's Law introduces a new type of special measure, or one might even say treatment, into the already existing and well-known system of "safety measures" in the Serbian criminal legislation. Thus, the sex offender is required to report to professional counseling centers, according to the program determined by the Probation Service. It should be underlined that this special measure is automatically applied to every sex offender sentenced to prison. However, despite being functionally similar, there is a basic difference between special measures and safety measures, because safety measures are ordered by the court, just as all other criminal sanctions, which is not the case with special measures (Miladinović-Stefanović & Knežević, 2018, p. 112). In the theoretical and general sense, the measure of post-prison supervision of dangerous offenders can be disputed: it is not known whether it is a punishment, a safety measure or a legal consequence of the conviction (Mrvić-Petrović, 2015b, p. 42). Most likely, in Serbia, the intention was to create a measure similar to the conditional sentence/probation with protective supervision which already exists in the Serbian criminal legislation.

When it comes to maintaining sex offenders database, it should be emphasized that it includes a large volume of personal data recorded, with a permanent retention period. Therefore, the register will keep the following data related to a

convicted person: name and surname, personal identification number, address of residence, employment data, physical recognition data and photographs, DNA profile, data on the criminal offense and the imposed sentence, data on the legal consequences of the conviction, and data on the implementation of special measures (Art. 13 of Marija's Law). However, at the same time, it has been foreseen that the data from this register is available only to a limited number of agencies. Thus, the register data can be shared with the court, public prosecutor, probation service, and the police in connection with criminal proceedings. In addition, upon a reasoned request, the data can be shared with the state authority, company, other organization or entrepreneur, if the legal consequences of the conviction are still ongoing and if they have is a justified interest based on the law, while other subjects and authorities and legal entities working with minors are required to request information on whether a person who is supposed to perform work with minors is registered in the sex offenders database. In addition, the data can be shared with foreign states, if it is in accordance with the relevant international agreements. Therefore, according to the Serbian law, the data on sex offenders is not available to the general public.

Unlike the solution present in the Croatian legislation, in Serbia, supervision and special measures are applied by force of law and without a prior assessment by a court, although there is an obligation to periodically reevaluate their justification. In addition, the possibility of deleting personal data from the sex offenders register has not been foreseen.

3. Special Measures for Sex Offenders and Human Rights Review of the European Court of Human Rights Practice

Although the introduction of various databases and measures to monitor sex offenders appears to be inevitable and necessary, the experts have singled out practices that can be problematic from the point of view of respecting human rights.

Let us start from the obvious: regardless of the pronounced social danger of the crimes committed by sex offenders and the strong emotional reaction their behavior causes among the public, just like everyone else, they must enjoy their inviolable human rights (Perlin & Cucolo, 2020, p. 430). Therefore, we must not lose sight of the fact that sex offenders are not only lawbreakers but also the beneficiaries of these rights, and that the state is required to both prevent and punish sexual crimes, and ensure the preconditions for the rehabilitation of sex offenders, while the right to rehabilitation also indicates a proactive attitude towards the problem of recidivism (Easton, 2001, p. 72). If violations of complex special

measures result mainly in the repeated punishment, they can result in an *circulus vitiosus* of restrictions of human rights, in which the individual factors that cause the crime are not taken into account (Mrvić-Petrović, 2015b, p. 42).

Bearing in mind that there are generally no special measures for controlling other groups of offenders, nor special databases containing their personal data, the question can be raised as to whether that is a discriminatory treatment against sex offenders. For many years, the argument has been made in literature that sex offenders around the world have been singled out as a special category on which various measures of an extensive and innovative character can be imposed. Although the argument for the necessity of protecting potential victims, especially minors towards whom society and the state have a number of complex obligations, is rightly emphasized, this does not invalidate the unacceptability of restricting human rights without a clear basis in scientific research and the phenomenological characteristics of sexual crimes. As already discussed, it cannot be denied that the creation of measures is often based on various prejudices about the sex offenders' characteristics and behaviors.

Furthermore, the specific response to sexual crimes calls into question the entire concept of the criminal law reaction, which is essentially aimed at rehabilitation, however unattainable that goal may be (Kovačević, Maljković & Bogetić, 2020, p. 146). If, as in the case of sex offenders, the focus is officially on controlling their behavior through the engagement of various repressive mechanisms, even after the sentence has been served, the question naturally arises as to whether this negates their personal dignity by *a priori* excluding the possibility of their change for the better.

The analysis of the European Court of Human Rights case law points to several areas where respect for the human rights of sex offenders could be questionable.

The first group of endangered rights could include the rights to humane and dignified treatment and the prohibition of inhumane treatment in accordance with Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (adopted in Rome, 1950, hereinafter: the ECHR). In this regard, there is a large number of cases considered before the European Court of Human Rights related to the potential inhumanity of life imprisonment, such as *Petukhov v. Ukraine* and *Murray v. Netherlands*. Namely, the inhumanity of sentencing someone to life imprisonment, without the possibility of parole, is reflected in the denial of the possibility of rehabilitation, and in the utter deprivation of hope that comes with the impossibility of release. Concerning the above, if the possibility of the sex offender improving for the better is excluded, this could perhaps be considered

a degrading treatment too. In this case, it would be illusory to expect the sex offender to have the will and desire to participate actively in the treatment. It should be borne in mind that the concept of rehabilitation has changed over time, moving from the original perception of rehabilitation as a form of redemption, through rehabilitation in the form of returning to the community in the role of a socially useful member, to the today's widespread attitude about rehabilitation implying that it, in itself, represents the specific right of the offender independent of the favorable effects on the broader social community (Martufi, 2018, p. 673). If, after the sentence has been served, supervision measures are imposed by force of law, and regardless of the efforts the convicted person has invested in his treatment, is that not equal to negating the meaningfulness of the previously received treatment? Is it fair that different offenders suffer the same level of restrictions even after having served their sentence, just because they were convicted of the same group of crimes?

In the Marcello *Viola v. Italy* (no. 2) case, the European Court of Human Rights has concluded that even with a life sentence there must be an option for early release/parole, and a sentence review in order to assess whether there are legitimate penological grounds for the continuing imprisonment. The European penal policy places an explicit emphasis on rehabilitation as the main purpose of punishment. In the above case, the applicant was sentenced to a life sentence for organized crime, while the Italian legislation demanded cooperation with the prosecution in an ongoing investigation in order to obtain parole. However, convicts, including Viola, often refused to cooperate due to fear for their safety and the safety of their family members, which at the same time did not have to imply that they did not undergo a personal transformation during the serving of their sentence. Therefore, the court was of the opinion that it is unacceptable to equate refusal to cooperate with authorities with the perpetrator's undiminished social danger. In the specific case, the question was raised as to whether Viola's personal progress had been taken into account at all, or whether early release was simply excluded as a possibility just because of the type of offense. The European Court of Human Rights further notes that personality traits are not an immutable category, because personality can change and develop during the serving of a sentence primarily through a process that enables a critical review of the past. In connection with the above, we could pose the question as to whether sex offenders, who are subject to different measures even after having served the prison sentence, could also refer to the inhumane treatment they have been subjected to, if it is simply assumed that all of them, regardless of their individual circumstances, must go through various types of control and restrictions because they did not "improve". In Croatia there is no possibility to automatically impose such

measures, without evaluating the circumstances in each individual case, while in Serbia these measures are applied automatically.

Furthermore, when it comes to Article 5 of the ECHR, and the protection of the right to freedom, the question arises as to whether sex offenders are exposed to inappropriate restrictions, primarily in the domain of freedom of movement. If extensive restrictions over freedom of movement are applied, it is possible that the restrictions will come close to a deprivation of freedom, and the question arises as to whether such action is justified and acceptable. Article 5 of the ECHR stipulates that everyone has the right to freedom and personal security, and that no one can be deprived of these rights except in cases defined by law and in accordance with the procedure prescribed by law, which also requires enabling the initiation of proceedings for the court to urgently examine the legality of such deprivation and order release if the deprivation was illegal. However, Protocol No. 4 to the ECHR (adopted on 16 September 1963) stipulates, under Article 2, that freedom of movement also implies the right to choose the place of residence and to leave the country, in which case state cannot place any restrictions on the exercise of these rights other than those which are in accordance with the law and which are necessary in a democratic society in the interests of national security or public safety, for the preservation of public order, for the prevention of crime, for the protection of health or morals or for the protection of the rights and freedom of others. Therefore, Protocol No. 4 specifies more closely the rules regarding the freedom of movement, beyond situations in which a person is detained or is serving a prison sentence, which means that the freedom of movement can be limited, legally or illegally, even in situations where a person is not physically confined within a specific fenced area. Article 2(4) of Protocol No. 4 foresees that these rights may be subject to restrictions introduced in accordance with the law and justified by the public interest in a democratic society. Bearing in mind the above provisions, it is clear that there is a possibility to determine by law specific grounds which allow the limitation of the freedom of movement beyond the conduct of criminal proceedings and the execution of a prison sentence, but it is also indisputable that when conceiving such grounds one should be very careful in assessing those interests that justify restrictions of freedom. The question arises as to whether it is acceptable to require all persons who have served a prison sentence for a sexual offense to report to the police monthly and inform the authorities about traveling abroad.

In particular, the prohibition of visiting certain places can be controversial if it is not clearly defined what type of places constitute the prohibited zone. Thus, in *De Tomasso v. Italy* the court states that the legitimacy of restricting the freedom of movement is not proven by the fact that there is a legal basis for

limiting the freedom of movement, but rather by the quality of the specific law and the predictability of the restrictions on the freedom of movement that may result from it (*De Tomasso v. Italy*, §106). In this particular case, the law provided for an absolute ban on attending public gatherings, while it did not provide for more specific spatial or temporal restrictions. As the provisions of the national law were not explicit enough, it could not be clear to the applicant what was actually expected of him, thus violating the provisions of Protocol No. 4. On the other hand, when the law precisely specifies the conditions under which the movement of certain citizens can be restricted, such restrictions can be legitimate. Within the described context, a special measure from Article 9 of the Serbian Marija's Law, foreseeing the prohibition of visiting places where "minors gather such as school buildings, school yards, kindergartens, playgrounds, children's events and similar" can be disputed if it is taken into account that the prohibited places have been vaguely defined.

In addition, the question arises as to whether the application of the same measures to the entire group of offenders is in line with the right to review the decision and the right to a fair trial in the spirit of Article 6 of the ECHR. Namely, Article 6 of the ECHR stipulates that everyone has the right to a fair and public hearing within a reasonable period, before an independent and impartial court. Given that the application of specific measures may imply significant restrictions on the rights and freedoms, the question of the legitimacy of the application of such measures without any prior discussion and explanation may be raised. Furthermore, if the special measures are imposed to sex offenders by force of law, the question of respecting the right to an effective legal remedy also arises. Therefore, if imposing special measures requires the restriction of specific freedoms and rights, it is debatable whether such measures can be imposed without prior verification and assessment of their justification. It should be borne in mind that the laws on special measures for sex offenders often provide for a periodic verification of the appropriateness of the measures, which can be initiated by the person to whom the measures apply. However, there is often no initial justification of the imposed restrictions, which is also a characteristic of the current Serbian law solution. When it comes to Croatia, the circumstances are somewhat more favorable, bearing in mind that the application of specific measures rests on a court decision, as well as the fact that sex offenders also enjoy the right to have their personal data deleted from the sex offenders register.

In addition, Article 7 of the ECHR, which guarantees that everyone can be held accountable only for the offence that was prescribed by law at the time of the commission and cannot be sentenced to harsher penalties than those applied at the time of commission, also points to the dilemma of the acceptability of the application of

additional measures that are often not provided for by the criminal law or that were introduced by laws that came into force after the crime was committed. The question arises as to whether such measures are considered preventive or punitive by nature, whereby the application of additional punitive measures could be disputed. The European Court of Human Rights took their position on this issue in *Gardel v. France*, stating that a registration in the database and the six-monthly mandatory reporting to the police with notification of a change of residence, even if the measures were introduced by a law that came into force after the applicant was convicted, does not constitute additional punishment beyond the *nullum crimen, nulla poena sine lege* rule. A preventive measure is ordered with the aim of protecting peace and safety, and consequently the limitation of freedom on such a modest scale cannot be considered a punitive measure (*Gardel v. France*, §46).

Finally, Article 8 of the ECHR, which guarantees the right to privacy and family life, may be in conflict with personal data recording, storage and regular reporting, with the possibility of public data disclosure particularly controversial. While certain limitations of privacy are legitimate, at the same time, the question arises as to whether every sex offender case justifies personal data series recording and re-obtaining. In this context, the possibility of storing DNA profiles in different registries is a key issue, especially considering the abundance of genetic and health data arising from it. In *S. and Marper v. the United Kingdom*, the European Court of Human Rights determined that the permanent storage of the DNA profile of a person who was suspected of having committed an offense, but not found guilty, cannot be acceptable when, during retaining the data, there was no evaluation of the severity of the offense, previous (non)conviction, and individual circumstances that refer to a specific person whose data is permanently stored. The storage of DNA profiles can be very useful in detecting and solving crime, but when restricting human rights, the authorities cannot be guided only by what facilitates the criminal procedure, regardless of the scope and nature of the human rights restriction. If we apply the analogy, mandatory and permanent storage of every sex offender's personal data would not be acceptable.

It should be emphasized that neither in Serbia, nor in Croatia, nor in most European countries, is there a possibility of public display of the sex offenders register data, and that the aforementioned registers serve only for the purposes of detecting crime and conducting criminal proceedings. This eliminates the fear that the privacy of sex offenders would be violated. On the other hand, in Serbia, entries in the sex offenders database are of a permanent nature, which raises other controversial issues, which are not the focus of our interest at this moment.

4. Conclusion

While the prevention of sexual abuse is a topic of great social importance, it also arouses public attention and very strong emotional reactions. Due to such circumstances, sex offenders can easily find themselves in a position where the wider public approves the restriction of their rights guaranteed by international law. At the same time, that is a straw man argument, as the impression is created that the victims got something special through the application of ever harsher retribution towards offenders, although in reality, the needs of the victimized for help and support remain in the background. This increases the risk of introducing populist measures, which not only fail to produce the promised favorable effects, but also reduce the resources that could be used for a strategic and evidence-based crime prevention.

To enable the realization of the crucial values embodied in the best interest of the child, on one hand, and respect for the human rights of all citizens, on the other, in this matter, we should strive to respect international standards. The contemporary civilization development cannot tolerate the unlimited and unargued limitation of anyone's rights, including the rights of sex offenders, while they, just like all other citizens, have the right to a second chance and rehabilitation. Through the rehabilitation of this category of offenders, the common social interest is achieved by these persons returning to everyday social flows, rather than having a situation that their compliance with law depends predominantly on the continuous and active monitoring. Therefore, instead of lamenting over the incurability and intractability of sex offenders, the authorities have a duty to ensure a sufficiently branched and well-organized post-penal care network, whereby the available measures cannot be limited to the threat of restricting the rights and freedoms. The aforementioned highlights the complex issues of post-penal support and the allocation of resources for the provision of various types of assistance, from counseling and housing to health care. At the same time, before designing any measures and innovations, one should take a deep look at the current situation, evaluate the effects of the measures that have already been implemented, and review the experiences of other countries, whereby the focus should be on the comparable countries. A detailed understanding of the state of affairs may indicate the need and justification for more intense restrictions on the rights and freedoms of sex offenders after the completion of the criminal sanction, but even then such restrictions should be specified for each case individually. In this sense, while there is room for the improvement of laws and bylaws which should precisely stipulate when, why, according to whom, and to what extent restrictions on human rights are acceptable, it is also necessary to specify who will implement the designed measures, given that both in Serbia and in Croatia, there is a lot of ambiguity at the moment.

Last but not least, the prevention of sexual abuse should also take place through the process of continuous education, both with children and parents, as well as with guardians, teachers and others who frequently come into contact with children, to ensure early detection of sexual violence and appropriate and timely response in case of its manifestation. The role of the media in responsible reporting on sexual offenses is also crucial. The essential advocacy for the realization of the best interests of the child would thus be achieved through the synergistic action of all entities that participate in the formal and informal response measures to the sexual abuse of children. In contrast to that, focusing on limiting offenders' rights, retribution and shaming gives only the appearance of a responsible attitude towards the safety and future of children and other potential victims.

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