Milica KOVAČEVIĆ, PhD*
Associate Professor
Faculty of Special Education and Rehabilitation
University of Belgrade

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Jelena SRNIĆ NERAC**
Head of the Department for Execution of Non-Custodial Sanctions and Measures
Directorate for Execution of Criminal Sanctions
Ministry of Justice of the Republic of Serbia

SPECIAL MEASURES AND REGISTERS FOR SEX OFFENDERS – NORMATIVE FRAMEWORK IN SERBIA AND COMPARATIVE LEGAL ANALYSIS[1]

In recent years the attention of the wide audience and academics has been directed toward sexual offending in general and child sexual abuse. On the one hand, there is a pressing need to protect the youngest and enable the realization of the best interests of the child, and on the other, there is also a need to adequately address the moral panic caused by these brutal crimes against minors. With the aforementioned challenges, it is easy to forget that sex offenders also enjoy human rights that must not be violated, regardless of the importance of the goal that is being pursued. Bearing in mind the above, the article is devoted to the analysis of the Serbian substantive legal framework that defines the application of special measures and the registration of sex offenders, and

* E-mail: milica.kovacevic@fasper.bg.ac.rs
** E-mail: srnicj@gmail.com

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to the comparison of this framework with the laws in the United Kingdom and France. The aim of the paper is to point out the possibilities for improving current Serbian legislation in order to achieve the most comprehensive protection of children while respecting relevant European standards and maintaining the rule of law.

Keywords: sex offenders, sex offender register, supervision, human rights.

1. Introduction

Criminal laws throughout the world recognize the category of criminal offenses against sexual freedom, with classic criminal offenses such as rape and illicit sexual acts, while in most countries, including Serbia, the most serious sex crimes are those that include the victimization of minors. However, the mechanisms of protection against child sexual abuse, due to the complexity of this phenomenon, in modern times go beyond the criminalization of certain behaviors, so some specific measures that could be implemented during and after the implementation of the criminal sanction are also being considered. Additional obligations for Serbia and other European countries were conditioned by the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse[2] (hereinafter: Lancerot Convention), which requires states to establish and implement comprehensive measures both in terms of reacting to child sexual abuse that has already occurred, and in the domain of the prevention of this malignant phenomenon (Miladinović-Stefanović, 2014: 568). Special measures for sex offenders thus range widely: from entering the personal data of convicted persons into a special database, a certain level of informing the public about the activities of offenders and the application of individualized treatments, all the way to active supervision and certain limitations of the rights of convicted persons.

The Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1733(2010) on Reinforcing measures against sex offenders, on 21 May 2010, which emphasizes the importance of recognizing the specific danger of sexual offenses and providing the most comprehensive protection to both children and other categories of victims. It states that the "register of sex offenders" is a mechanism that ensures the notification of authorized subjects about the personal

2 Law on Ratification of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse, *Official Gazette of RS - International Treaties*, No. 1/2010.

data of convicted sex offenders: such as name, address and date of birth, whereby the offenders are obliged to inform the authorities of all data changes. It is noted that the register could make a key contribution to the supervision of convicted persons, especially if it is used as a part of complex work with this population and that it can help future detection of suspects. Although the Resolution calls for the closest possible cooperation between European countries in order for the authorities to obtain information about the whereabouts of offenders, and with the aim to prevent the employment of former sex offenders in the sector that implies working with children and other vulnerable categories, the Resolution emphasizes that it does not plead for the introduction of a central European register, but that each country is authorized to form a register in accordance with its circumstances and regulations. Also, it was pointed out that the data from the registers should not be publicly available, and that the recording and provision of data must be fully harmonized with the legislation related to human rights and the protection of personal data. The necessity of organizing campaigns to raise awareness about the phenomenon of sexual abuse is highlighted.

The Council of Europe has also adopted Recommendation regarding the assessment, management and reintegration of persons accused or convicted of a sexual offense CM/Rec (2021)6, 20 October 2021, in which it was stated that sexual offenses cause negative consequences for victims and society, and that therefore organized reaction must be based on adequate risk assessment, individualized treatment and interventions aimed at the reintegration of offenders. The concept of "risk assessment" is particularly significant, which implies a series of formalized procedures undertaken by adequately trained experts in order to take into account the personal characteristics of the offender and assess the risk of future sexual offenses. Furthermore, the term "risk management" requires the application of measures and interventions both during the implementation of institutional sanctions, as well as during probation and subsequently, with the aim of preventing future offenses and enabling the reintegration of offenders. The recommendation states that dealing with sex offenders must be based on the cooperation of different agencies, in order to place the problem of sexual offenses in a comprehensive context and take into account the psychological, social, health, housing and other needs of the offender. It is particularly significant that the responsibility of official actors is insisted upon when undertaking actions related to risk management, so that they are obliged to regularly review their actions. The recommendation also contains a part related to the protection of victims, and the possibility of informing victimized persons about the whereabouts of offenders.

The World Health Organization defines child sexual abuse as any involvement of a child in sexual activities that the child does not fully understand, is unable

to give consent to, or for which the child is not developmentally prepared, or that violates the laws or some rules of society (WHO, 1999: 15). It is difficult to estimate the prevalence of sexual abuse because of the dark figure of crime which is extremely high in this area. Issues related to the detection and reporting of sexual abuse become particularly complex when children are involved (Mitrović, Grbić-Pavlović, Tomašević, 2022: 106), while it should also be borne in mind that sexual abuse of children often takes place in the privacy of home and that the perpetrators are persons close to the child (Stevanović, 2005). Studies indicate that in the USA, around 16% of males and between 25% and 27% of females were sexually abused as children (Perez-Fuentes et al., 2013), while a meta-analytic study that included results from 24 countries around the world found that the rate of victimization by sexual violence ranges between 8% and 31% when it comes to girls, and between 3% and 17% when it comes to boys (Barth et al., 2013).

It is indisputable that sexual abuse can cause negative consequences on health, sanity and personal development (Browne, Finkelhor, 1986), so, especially considering the prevalence of this phenomenon, the creation and implementation of adequate responses are of great societal impact. Therefore, the European documents plead for a comprehensive approach to the problem of sexual abuse, where the focus should not be only on mechanisms for direct monitoring and controlling the behavior of sex offenders. On the contrary, on the one hand, the Lancet Convention is dominantly related to the sanctioning of child sexual abuse through criminalization, prosecution and punishment, and on the other hand, the documents listed above draw attention to the obligations and responsibility of the state in suppressing sexual abuse through the application of prevention.

2. Special measures for sex offenders in Serbia

The Law on Special Measures for the Prevention of Criminal Offenses against Sexual Freedoms against Minors[3] (hereinafter: Marija's Law) has entered into force in 2013. Marija's law includes certain novelties related to the prosecution and sanctioning of perpetrators of sexual offenses, as well as novelties related to the treatment of these persons after the execution of the criminal sanction. The colloquial name "Marija's Law" was created in memory of eight-year-old Marija Jovanović, a victim of a crime. It should be emphasized that the scientific and professional public were not actively involved in the process of creating the law, and that even at the current moment they are not thoroughly informed about the

3 *Official Gazette of the RS*, No. 32/2013.

effects of its application. The adoption of the law was conditioned, among other reasons, by the need to respond to serious crimes that triggered general outrage, which is also characteristic of many other countries that passed laws on sexual offenses. It is common knowledge that intensive, and unfortunately sensationalist, media coverage of sexual offenses can exert a dominant influence on public attitudes, and contribute to the strengthening of stereotypes and prejudices, which is then reflected in the creation of public policies and legislative reforms (Galeste, Frodella, Vogel, 2012).

Marija's law has established a special database of persons convicted of child sex abuse and at the same time the mandatory application of special measures against certain categories of sex offenders. Juvenile sex offenders are not included in this database.

The legislator enumerates the criminal offenses that require entry into the register and the application of specific measures, which include: rape, sexual intercourse with a child, illicit sexual acts, enticing a minor to prostitution and the use of a computer network or *means of electronic communication* to commit sexual abuse of children, as well as other criminal acts. In the literature, doubts are justifiably expressed as to why certain criminal acts were omitted from the list, such as incest and human trafficking (Miladinović-Stefanović, 2014), especially considering the extremely vulnerable categories of the youngest, such as street children, who are directly exposed to the risk of being trafficked and afterward becoming victims of sexual exploitation (Stevanović, 2014: 12).

Marija's Law also defines certain special legal consequences that occur as a result of a conviction for sexual abuse of a minor, which will not be the focus of our interest on this occasion. However, it should be emphasized that the legal consequences of the conviction, in the form of a ban on obtaining public positions and a ban on establishing employment related to working with minors, are expected to last for 20 years from the judgment declaring the convicted person guilty of sexual offenses, under Art. 6 of Marija's law. At the same time, the Criminal Code of the Republic of Serbia[4] (hereinafter: CC), which was designed as a codification in the field of criminal law, provides that the legal consequences of a conviction consisting in the prohibition of the acquisition of certain rights can be prescribed for a maximum duration of up to ten years, according to Art. 96 para. 3 CC.

What is a significant novelty compared to the period before the adoption of Marija's Law is the introduction of special measures and special register for sex offenders whose victims were minors. Article 7 of Marija's Law provides that,

4 *Official Gazette of the RS*, No. 85/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.

after serving the prison sentence for the enumerated offenses, special measures are to be implemented in the form of: mandatory reporting to the police and the Directorate for the Execution of Criminal Sanctions; a ban on visiting places where minors gather (kindergartens, schools, etc.); 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 traveling abroad, whereby these measures are implemented no longer than 20 years after the prison sentence has been served. Measures are reserved only for those sentenced to prison terms, so the question arises as to why special measures are not applied in the case of conviction to other criminal sanctions, given that the legislator stressed, in Art. 2, that the measures should prevent the perpetrators of criminal offenses against sexual freedom from committing those acts.

After four years from the beginning of the implementation of the measures, the court *ex officio* decides on the need for their further implementation, whereby the person to whom the measures refer can also submit a request for review after every two years from the beginning of the application of the special measures. The court repeats this procedure every four years.

Article 8 of Marija's Law stipulates that the measure of mandatory reporting implies the duty of the sex offender to report personally and on a monthly basis to the unit of the police in his place of residence, as well as to the organizational unit which functions under the Department for the Execution of Non-Custodial Sanctions and Measures. The organizational unit is actually one of 25 Commissioner's Offices that cover the territory of the Republic of Serbia. Also, according to Art. 11, the sex offender is obliged to personally notify the police and the Commissioner's Office about the change of his residence, place of residence or workplace, while the same obligation exists in the event of traveling abroad, of which the police must be notified no later than three days before the planned trip, according to Art. 12 of Marija's Law.

It could be said that, through Art. 10 of Marija's Law, a new treatment/safety measure was introduced into the already existing system of treatment/safety measures in Serbian criminal legislation. Thus, the perpetrator of the enumerated sex offenses is obliged to visit professional counseling centers, and to be treated according to the program determined by the Commissioner from the relevant Commissioner's Office. It should be underlined that this new measure, regardless of its specific character and preventive orientation, is automatically applied to every sex offender sentenced to prison. It is possible that the intention was that this new measure would actually substitute the conditional sentence with protective supervision which, if the conditions are met in every individual case, is applied to those who have not been sentenced to an effective prison sentence.

Some objections have been raised in the literature regarding the establishment of such a special treatment measure, given that it remains unclear whether it is a treatment/safety measure or a legal consequence of a conviction. Namely, Marija's law itself practically stipulates that treatment measures created by it are not a legal consequence of a conviction, because the legislator enumerates the legal consequences of a conviction without including treatment measures, while these special treatment measures cannot be treatment/safety measures created by CC, given that safety measures in CC are criminal sanctions that can be imposed exclusively by the court (Ristivojević, 2012: 185).

It should be underlined that Marija's Law did not directly deal with the possibilities of misuse of modern technology and *electronic communication* when committing child sexual abuse, although it is undeniable that offenders are very inventive in finding new opportunities for committing criminal offenses (Škulić, 2022: 10) and that reaching for the modern science is to be expected. It should also be borne in mind that regular reporting to the police does not affect the possibility of undertaking illegal activities in the online sphere.

If the convicted person ignores the obligation to respect the prescribed restrictions, that is, if he/she does not fulfill the prescribed duties, he/she could be charged with a misdemeanor and convicted to a prison sentence for a period of 30 to 60 days.

When it comes to keeping data in the register, it should be emphasized that it contains a large number of personal data and that data storage is permanent, meaning that the possibility of deleting existing entries is excluded. The following data relating to the convicted person will be recorded: name and surname, unique master citizen number, residential address, employment data, data for physical identification 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, in accordance with Art. 13 of the Marija's law. However, at the same time, it is foreseen that the data from the register is available only to a limited group of subjects. Thus, the data from the register, the management of which is the responsibility of the Directorate for the Execution of Criminal Sanctions, can be made available to: the court, the public prosecutor and the police in connection with criminal proceedings, that is, the Commissioner's Office when it is necessary to carry out tasks within their competence. Upon a request, the data can be disclosed to a state authority, company, other organization or entrepreneur, if the legal consequences of the conviction are still ongoing and if there is a justified interest based on the law, while state and other authorities, as well as legal entities or entrepreneurs engaging with minors are required to request information on whether the person who is supposed to engage with minors

is registered in a sex offender database, under Art. 15 of Marija's law. Data can also be shared with foreign governments if this is in accordance with relevant international agreements. Therefore, according to Serbian law, data on sex offenders enjoy a confidential character, and there is no possibility of their exposure to the general public, which is in accordance with European standards, as well as with practices in almost all European countries.

To summarize, in Serbia, special measures for the purpose of monitoring and treating sex offenders are applied by force of law, that is, without prior assessment of their justification by the court, although there is an obligation to periodically check the validity of their further application. Also, the possibility of removing personal data previously entered in the register is not foreseen, whereby the content of the register is not available to the lay public.

3. Special measures for sex offenders in the United Kingdom

In the United Kingdom of Great Britain and Northern Ireland (hereinafter: United Kingdom), after serving a prison sentence or other criminal sanction, most sex offenders are under supervision defined by the *Multi-Agency Public Protection Arrangements* (Guidelines for Multi-Agency Public Protection Arrangements, hereinafter: MAPPA). In fact, MAPPA implies the creation of an individualized program that will be applied to a specific sex offender, after a comprehensive assessment of risk of re-offending and with the cooperation of several agencies. Depending on the complexity and scope of the required measures, there are three levels of the regime that is to be applied, where the first two levels require a lower level of cooperation between representatives of several public agencies, while the third level requires the application of complex measures and close cooperation of representatives of the probation, health services and other systems who take care of offenders and supervise them.MAPPA was introduced through the Criminal Justice Act 2003. This document defines how the police, penal institutions and the probation service cooperate when it comes to monitoring and providing support to sex offenders. The Ministry of judicial affairs periodically publishes the MAPPA rules, and they must be applied to: 1) offenders who, under the Sexual Offences Act 2003, are obliged to periodically notify the police of their address and other personal data, 2) violent offenders who have been sentenced to imprisonment for more than 12 months or treatment in a closed institution and 3) other offenders for whom a high risk of re-offending has been determined. In each specific case, it is defined which public agency

will be the main coordinator of MAPPA implementation, so that, for example, it could be the Probation service for those who are on probation. The coordinator makes sure that the measures are designed in a timely manner.

It should be noted that certain rules are also provided for the protection of victims of sexual offenses. Thus, under certain conditions, these persons are to be informed about the release of the offender from the penitentiary, and measures can be applied with the aim of preventing contact between the victim and the sex offender.

What is particularly interesting when it comes to England and Wales is the possibility of applying civil law measures/civil orders in order to control the behavior of sex offender. Thus, when it comes to restrictive measures, there may be an application of orders consisting of the prohibition of approaching certain places such as schools or recreational centers, and it may also be prohibited to approach individualized victims. A controversy was caused by the application of civil orders related to various prohibitions and especially the Internet ban. These measures are known as SHPOs (Sexual Harm Prevention Orders) and are imposed by the court based on the Sex Offences Act 2003. The measures can last up to five years with the possibility of extension, and if the offender were to act contrary to the measures, there is a possibility of imprisonment for up to five years.

When it comes to special registers, the Violent and Sex Offender Register (hereinafter: VISOR) was established by the Sex Offences Act 2003. The data of all persons who have served a prison sentence of at least 30 months, both for sexual offenses and for serious violent offenses, are permanently entered in the register. When it comes to convictions lasting between six and 30 months, the personal data are kept for ten years, while in the case of those sentenced to a prison sentence of fewer than six months or sent to outpatient treatment, the data is kept for seven years. Finally, for offenders who were given only warning measures, data is stored in VISOR for two years, or during the probation period for those persons who are subject to probation measures. For juvenile offenders the data is kept for shorter periods of time. Due to objections that the permanent recording of data, without the possibility of erasure, is against the concept of respecting human rights, and after the judgment of the Supreme Court in 2010, the possibility of erasure has been foreseen after 15 years from the initial recording (Padfield, 2016: 56). VISOR contains personal data, data on convictions, data on residential address and employment, as well as data on bank accounts and finances of convicted persons. The database can be accessed by the police and agencies participating in the implementation of MAPPA. Therefore, the data from the register is not publicly available, but there is a possibility that citizens who are concerned about the safety of children or other vulnerable persons may request access to the data in order to check whether a certain person is registered

in it. The inquiry is sent to the police. The above is regulated by an act called *UK's child sex offenders disclosure scheme*, also known as Sarah's Law. Registered offenders are obliged to notify the police of all changes in personal data within three days from the date of the change. They are also obliged to notify the police if they plan to travel abroad, as well as to declare all the details related to their trip outside the UK's borders.

4. Special measures for sex offenders in France

During the 1990s, media interest in the child sexual abuse began to expand in France, which led to the adoption of a large number of amendments to laws at the beginning of the 21st century (Herzog-Evans, 2016: 68). The focus is on mandatory treatment, which can continue even after serving a prison sentence or other criminal sanctions, but also on the application of complex measures aimed at monitoring sex offenders. The application of measures is conditioned by the assessment of risk of re-offending. The risk must be adequately assessed, and the invasiveness of the measures should be proportional to the risk.

Between 2005 and 2008, amendments to the law were adopted that have enabled the application of surveillance, electronic monitoring and preventive detention of previously convicted sex offenders, even though they have not committed a new crime and that the sentence has been served. The very fact that the person was already convicted of a sex crime and that the risk of re-offending was assessed as high, constitutes the possibility for the application of certain restrictive measures.

The public and academics were not particularly disturbed by the application of various surveillance measures, but instead directed their interest toward the justification of preventive detention (Herzog-Evans, 2016: 81). However, the possibility of applying new and additional measures called into question compliance with Art. 7 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) in the cases of offenders who had committed offenses before the entry into force of criminal law amendments. It is debatable whether the introduction of special measures for sex offenders negates the principle of legality, which guarantees the impossibility of applying a punishment that was not foreseen at the time when the crime was committed. However, when it comes to the entry of personal data into the subsequently established sex offender register, the European Court of Human Rights has stated that this measure is not retributive but preventive in nature[5], and that as such it

5 Gardel v. France, Application no. 16428/05, Judgment 17 December 2009.

does not contravene Art. 7, para. 2 of the ECHR, which stipulates that a heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed.

It is stated in the literature that neither an individual's danger nor the risk of recidivism can be precisely defined and measured, and there are no exact methods for making these assessments. In practice, it is usually considered that people with severe personality disorders are suitable for the application of invasive protective measures (Herzog-Evans, 2016). During the implementation of the treatment, the offender is treated by two medical doctors, one who works directly with him and the other who communicates with the officials, which enables the protection of privacy and preservation of the relationship of trust between the patient and the doctor.

Experts also state that sex offenders in France are not subject to significantly different measures compared to those applied to other offenders on probation, so measures will most often be about reporting to the police regularly, reporting changes in personal data and mandatory attendance of specific treatments (Herzog-Evans, 2016: 81). What is specific to sex offenders is the insistence on the application of measures that prevent contact with certain categories of persons. Statistical data from 2010 indicate that protective measures of a restrictive nature are applied primarily in the case of those convicted of serious crimes such as rape, while in the case of other sex offenders, the prevalence of measures is significantly lower (Herzog-Evans, 2016). It should be noted that in France, regardless of the legislative possibilities, the courts do not look favorably at the imposition of various restrictive measures and preventive detention. Also, unlike England and Wales, there is no possibility of applying restrictive measures from the domain of civil law. Unlike the United Kingdom, there is no possibility of a general ban on the use of the Internet, because the ban can only be imposed if the offender has misused the Internet to download illegal materials or to contact vulnerable persons.

What is particularly interesting when it comes to France is the possibility of imposing preventive deprivation of liberty in the cases of persons who could be released from prison after serving a prison sentence of 15 years or more for child sexual abuse and for other serious crimes (Wyvekens, 2010). Namely, if it is determined that there is still a significant risk of re-offending, that is, if a certain personality disorder has been diagnosed, these persons could be detained in a closed institution. Thus, the offender is locked up in a medical-judicial institution where he will stay permanently during the duration of the measure and where he will be provided with medical, social and psychological support. No later than one year before the planned release, the appropriate Commission shall assess the personality of the convicted person. For the evaluation to be carried out thoroughly,

a six-week stay in an inpatient facility qualified for the evaluation may be applied. Preventive detention will be applied only if it turns out that there is a high level of risk of re-offending, and that other measures, such as electronic surveillance, would not be sufficient to protect public safety. What is extremely important is the precisely defined obligation of the Commission to determine whether during the execution of the sentence there were conditions for the application of rehabilitative measures that would have a positive effect on personal development. Therefore, the question arises whether the offender was enabled to reach a certain level of personal progress through the application of appropriate treatment. This is of crucial importance from the point of view of respect for human rights, because otherwise would imply inhumane treatment and punishment. If the offender is still dangerous, but detention is not necessary, the Commission will refer the case to the judicial authority for deciding on supervision measures. In fact, the Commission only proposes that preventive deprivation of liberty could be applicable in the individual case, while the above-mentioned matter is decided by the court, which will discuss it in a public manner, while allowing the offender to hire his own medical expert. The court, for its part, must also determine whether the convicted person was allowed to participate in a rehabilitation program during the implementation of the prison sentence. The offender has the right to appeal the decision. Preventive detention is set for a period of up to one year, after which additional extensions may follow. The convicted person is authorized to request a review of the validity of the measure of preventive detention after the three-month imprisonment. After the end of preventive detention, if there is still a risk of re-offending, electronic monitoring may be imposed for up to two years. During the implementation of such supervision, the convict is also permanently subjected to appropriate treatment. If the person avoids treatment or if he does not comply with the established obligations, he can be placed in an institution again, based on the opinion of the medical experts. The above is determined by the provisions of the criminal procedural legislation (Code de procédure pénale, Art. 706-53-14).

Amendments to the criminal law in 2004 established a database of sexual and violent offenders. Namely, it is foreseen that the personal data of those convicted of rape and various forms of child sexual abuse, but also for other serious crimes such as murder, must be recorded. The register is managed by the Ministry of justice, while supervision is carried out by the court. The goal of recording data is to prevent re-offending, that is, to identify the perpetrators of serious offenses. The data is kept for 30 years for prison sentences of ten years or more, while in the remaining cases the entries are deleted after the expiration of 20 years. The law stipulates that registered persons are obliged to inform the police about their residential address once a year, that is, they are obliged to inform the police about a

change of address within 15 days from the date of the change. Persons sentenced to prison terms of ten years or more must inform the police about their address every six months. If the offender does not comply with the stated obligations, he may be sentenced to imprisonment for up to two years, or a fine of up to EUR 30,000.00.

The register of sexual and violent offenders is not public. The register can be accessed by a limited number of subjects, so that the data can be used by the court, the police, and the appropriate state authorities and employers when it comes to checking data related to persons who will profesionally engage with minors. It should be emphasized that the person whose data is recorded is entitled to request the public prosecutor to order the modification or deletion of data from the register, and that in case of disagreement between the public prosecutor and the offender, the court will decide on the matter. However, if offenders were convicted of child sexual abuse and sentenced to more than ten years, then it will be necessary to obtain the opinion of medical experts on the sanity of the given person before data deletion is allowed.

5. Final considerations and conclusion

In Serbia, since 2013 persons convicted for sexual offenses against minors fall under a special regime. This specific regime includes the recording of data in a separate register, specific legal consequences of the conviction, but also the application of certain special measures aimed at monitoring the behavior of sex offenders and providing the necessary support. The purpose of Marija's Law is to prevent offenders from re-offending, so the main goal of the law is to protect children and guarantee their best interests. Although such a goal is undoubtedly legitimate and above all socially significant, it seems that the mechanisms and resources through which it will be realized have not been precisely defined. In addition to the above, Marija's law may open up certain questions regarding the respect for the human rights of sex offenders.

Marija's law is mostly focused on measures of a predominantly supervisory nature that are applied to persons convicted of child sexual abuse after the execution of a prison sentence. In this respect, Serbia does not differ significantly from the United Kingdom and France, nor does it deviate from the ideas advocated by international and European documents in the field of responding to sexual crimes and child sexual abuse. What makes Serbia different from the mentioned countries is the absence of criteria based on which offenders are selected when implementing special measures. Namely, Marija's law foresees the application of special and preventive measures toward sex offenders who were sentenced to prison.

These measures are to be implemented in the period after serving the sentence. In France, the need to apply preventive measures is decided immediately before the offender leaves institutional accommodation, so that specific measures are not applied automatically. In the United Kingdom, there is a mechanism defined through MAPPA which is put into function in relation to the tacitly enumerated categories of offenders, whereby the extent and type of special measures that will actually be applied depend on complex assessments of the overall circumstances of each individual person and case. In addition, in France, the decision on the application of the measures is made by the court after a comprehensive discussion.

Thus, one gets the impression that Marija's Law has introduced a *sui generis* new treatment/safety measure that is automatically applied to all sex offenders whose victims are children, regardless of the court's decision and the assessment of individual circumstances, provided that the offenders were previously sentenced to prison. The question arises whether this solution is, on the one hand, formally and legally correct, and on the other hand, whether it is appropriate. Undoubtedly, the legal character and nature of the special measures applied to sex offenders who have served a prison sentence are unclear, given that it seems that certain hybrid safety measures or a concept similar to probation with protective supervision have been created. It should be also borne in mind that in Serbia the criminal sanction is to be imposed only by the court after criminal proceedings initiated and carried out in accordance with the law, under Art. 12 of the Criminal Procedure Code[6], whereby the structure of the system of criminal sanctions is defined exclusively by the Criminal Code.

Also, the question arises as to why the application of special measures against sex offenders who were not sentenced to prison, even though they were declared guilty of child sexual abuse, is automatically excluded. The only effect that Marija's law produces against these persons is the collection of their personal data in the register, while the application of any other measures is absent. If the goal of Marija's Law is to prevent child sexual abuse, then its application should include all persons who manifest a certain risk of re-offending. It seems that one should be careful in establishing the assumption that an offender who has not been sentenced to an effective prison sentence will not need support or supervision in order to abbey the law in the period after the implementation of the criminal sanction.

The above leads us to another problem, which is the absence of more precise criteria for deciding on specific measures that should be applied to sex offenders. Namely, it is indisputable that in Serbia Commissioners use their practical and

6 *Official Gazette of the RS*, No. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14, 35/19, 27/21 and 62/21.

professional knowledge in this domain, and that they perform their professional activities according to modern scientific trends and standards. Also, it should be borne in mind that although Marija's law applies to sex offenders, their treatment and preparations for release should not be significantly different compared to other convicted persons. Considering that there is an obligation to report to the Commissioner, and that the release preparation program is carried out in prisons and later through the creation of a post-penal assistance program, the above implies that, if all the resources of the prison, the community and the Commissioner's Office are used, resocialization and reintegration could be achievable. In their work, prison staff and Commissioners use relevant instruments for risk assessment, so, although it is not precisely defined by Marija's law, the risk assessment procedure is part of the standard operating procedures. Also, the Commissioner is obliged to, in accordance with Art. 59 of the Law on the Execution of Non-Custodial Sanctions and Measures,[7] draw up a program for a person who is monitored under Art. 7 of the Marija's law. Nevertheless, this procedure should be precisely defined by Marija's Law, although until further notice we can use the provisions of the Law on the Execution of Non-Custodial Sanctions and Measures, specifically Art. 10, para. 2 according to which the individual treatment program is drawn up based on an assessment of the personality, personal circumstances, state of health, professional qualifications, risk assessment and needs of the convicted person and in cooperation with him. The individualized program also contains the methods, procedures and deadlines for its implementation, stakeholders and other data important for fulfilling the purpose of sanction, as well as the undertaken obligations or measures determined by the competent authority.

On the other hand, if it is borne in mind that in the United Kingdom very extensive and detailed guidelines on risk management are being periodically published, while in France psychiatrists and other specialists are officially involved in the process of risk assessment, it seems that Marija's Law is pretty vague on the topic of *modus operandi* that should be applied toward sex offenders. In this sense, the level of cooperation between the criminal justice system and the health and mental health care system in France should also be taken into account. Namely, in this country there is a complex system of assessing and deciding on the need for psychiatric treatment, either inpatient or outpatient, where the final treatment decision is made by the court after getting acquainted with the opinion of medical experts (Fovet et al., 2020). Also, in the United Kingdom, it is possible to impose various restrictive measures through civil orders, but these are also decided by the court after the appropriate initiation of complex proceedings. The

7 *Official Gazette of the RS*, No. 55/14 and 87/18.

crucial difference between Serbian law on the one hand and French and British law on the other is that the other two legislations pay significant attention to risk assessment. Therefore, neither in France nor in the United Kingdom, not a single measure is applied automatically, but only when it is assessed that in a given case, a concrete measure or intervention is needed. In addition, both France and the United Kingdom recognize judicial mechanisms for controlling the application of any, especially restrictive, measure, which is not the case in Serbia.

Then, in Serbia, there is a noticeable absence of defining the measures and obligations of state bodies and institutions in the exercise of supervision and support for sex offenders. Truth be told, the literature points out that the United Kingdom, and to some extent France, are increasingly focusing on a managerial approach in controlling offenders, while the individual relationship between civil servants and offenders, as well as relationships of mutual trust and support, are increasingly pushed into the background (Fernando, 2021: 3). However, in England and Wales in particular MAPPA also contains a section relating to the responsibilities of officials and the support measures they should provide or arrange to offenders. Thus, on an annual level, the MAPPA is revised as a series of complex regulations that relate to the obligations of the probation service, the social welfare service, the police and others. For example, in England and Wales there are also strategic documents related to the provision of social housing, although the problem of providing accommodation for ex-offenders has not been adequately addressed in this country either. It is indisputable that offenders cannot be reintegrated into society if they have nowhere to stay, so according to MAPPA local authorities are obliged to cooperate with competent agencies in finding accommodation for them (Her Majesty's Inspectorate of Probation, 2020:19). In Serbia, on the other hand, the Law on the Execution of Non-Custodial Sanctions and Measures refers to the provision of various types of support for offenders, without defining which specific resources the Commissioner will rely on in order to actually provide that support. Other objections have also been justifiably highlighted, such as the fact that it is uncertain how it could be practically controlled whether the sex offender respects the ban on visiting places where minors gather (Ćorović, 2016: 422).

Finally, the regulations of the United Kingdom, just like the documents adopted by the Council of Europe, also deal with the protection of victims of sexual offenses, which in Serbian legislation remains somewhat neglected. Although this is not a subject to which Marija's Law directly applies, we should take into account the possibilities for improving the position of victims and the protection that would be provided to them even after the criminal proceedings have ended. In this sense, certain amendments to the Law on Juvenile Offenders and the Criminal Protection

of Minors would be welcome[8], given that it mostly refers to protection in the context of criminal procedure. It should be especially noted that the literature points out that the already existing opportunities for the protection of minors as victims in criminal proceedings are insufficiently used in practice (Kolaković-Bojović, Drobnjak, Banić, 2021: 203), as well as that the issues in connection with the protection of minor victims after the ending of the criminal proceedings and beyond their procedural role are almost completely neglected. The above is connected with a limited understanding of the role and human rights of victims, given that the state must not only focus on criminal prosecution and retribution, but also on the victim's needs for healing and recovery (Bjelajac, Banović, 2020: 216).

Furthermore, in the compared legal systems, there is the possibility of erasing data once entered into a special sex offender register, which can be a particularly important issue if one takes into account the recent practice of the European Court of Human Rights. In this sense, it should be borne in mind that in France there is no category of permanent registration in the database of sexual and violent offenders, and that the data of offenders convicted of the most serious crimes are deleted after 30 years. In the United Kingdom, on the other hand, after the judgment of the Supreme Court, there is still the possibility of permanent registration, but even in the case of those convicted of the most serious offenses after 15 years have passed, a review of the validity of registration can be requested, so that the previously recorded file may be deleted. It would make sense to introduce the possibility of erasing entered data in Serbia as well, although the fact that the data entered in the Serbian register is inaccessible to the wider public does not make the current consideration of this issue a problem of urgent importance.

Therefore, the key recommendation for future amendments to Marija's Law would refer to specifying the criteria based on which special measures would be applied to sex offenders after the conviction. In addition, the relevant rulebooks should define a number of issues related to the determination and availability of resources through which the Commissioner's Offices would perform its complex tasks, and specify the mechanisms for the cooperation of this institution with other state bodies and the civil society.

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