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CRIMINOLOGICAL AND ETHICAL ASSESSMENT OF THE SEX OFFENDERS' REGISTRY OF THE REPUBLIC OF POLAND

Abstract. This study is dedicated to the ethical and criminological evaluation of the sexual offender's registry in the Republic of Poland. The topic remains controversial and is insufficiently addressed in existing academic literature. Therefore, the author aims to provide a comprehensive assessment of the registry. The paper investigates Poland's experience in recording and classifying convicted sexual offenders, highlighting the registry as a significant criminal law instrument for the prevention of sexual violent crimes. Furthermore, the author assesses the effectiveness of the registry and draws comparisons with similar practices in Western countries. Special attention is given to the Polish Public Sex Offenders Registry, one of the few publicly accessible crime registries within the European Union, which operates under the Act of May 13, 2016, aimed at counteracting sexual crime threats. This registry can be accessed from any device worldwide, resembling certain public registries in the United States. The article explores how such stringent regulations align with the General Data Protection Regulation (GDPR) established by the European Parliament, and evaluates whether this approach to crime prevention can be deemed sufficient. By analyzing the implications of the registry within the broader context of ethical considerations and data protection, the paper seeks to contribute to the ongoing discourse surrounding the balance between public safety and individual rights.

Keywords: publicly available registries of sexual offenders, criminal law, human rights, criminal responsibility for sexual crimes, criminology, comparative studies.

1. INTRODUCTION

It is often mentioned in the literature that the number of sexual offenses has been decreasing in recent years; however, a notable paradox arises: despite this actual decline, information regarding the commission of such offenses is frequently sensationalized in the mass media.¹

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1 Adam Strzelec, „Rejestr Sprawców Przestępstw na Tle Seksualnym”, in: *W poszukiwaniu prawdy: rozważania o prawie, historii i sprawiedliwości* ed. Katarzyna Banasik, (Kraków: Oficyna Wydawnicza AFM: 2018), 709.

This contributes to a misleading perception within society that the incidence of sexual offenses remains high and continues to escalate. Publicizing information about individuals who have committed sexual offenses against children elicits particularly negative emotions among the public, which often serves as a catalyst for legislators. In seeking to amend laws in this area, they aim to garner greater political capital.²

One significant legislative action in this context is the Act of May 13, 2017, on Counteracting the Threat of Sexual Crime, which can be regarded as a manifestation of penal populism.

This Act delineates specific protective measures designed to combat the threat of sexual crime, which, according to Article 3, include:

- 1) the Register of Perpetrators of Sexual Offenses;
- 2) obligations imposed on employers and other organizations involved in the upbringing, education, recreation, treatment, or care of minors; and
- 3) the identification of locations that pose a particular risk for sexual crimes.

In addition to the public Register, which is accessible to all, a Register with restricted access has also been established, available only to a specified group of entities, including courts, prosecutors, and law enforcement agencies, as outlined in Article 12 of the Act on the Protection of Sexual Offenders.³

With regard to managing perpetrators of sexual crimes, two predominant models exist globally: the community protection model (as seen in the USA, Australia, New Zealand, Canada, and the UK) and the clinical work model (which operates in countries such as the Czech Republic, the Netherlands, Germany, France, Denmark, and Italy).⁴

The primary tenets of the community protection model involve creating registers of sex offenders, informing the public about the dangers associated with sexual crime, supervising offenders post-release from prison, and controlling the recruitment process for individuals working in roles related to the education and upbringing of children and youth. Conversely, the clinical work model focuses primarily on therapeutic interventions for sex offenders, both during and after the completion of their sentences.

Which makes the Republic of Poland probably the only country in the European Union that has provided such deep changes in sexual offenders' treatment policy system.⁵

2 Ibid., 700.

3 Mariusz Nawrocki, „Informatyzacja publicznych rejestrów karnych”, in *Prawo nowych technologii*, ed. Kinga Flaga-Gieruszyńska, Jacek Gołaczyński, (Warszawa: Wolters Kluwer, 2021), 241.

4 Agnieszka Morawska, „Strategie postępowania ze sprawcami przestępstw seksualnych wobec dzieci na przykładzie wybranych krajów”, *Dziecko Krzywdzone. Teoria. Badania. Praktyka*, n. 3, (2004): 2.

5 Please kindly note that despite the numerous mentioning in Polish academic papers of the public registries of sexual offenders in different European countries, those public registries have no open access (hence they public in the sense of the subject who providing it). Which makes Polish most probably the only publicly available registry in whole Europe.

Which model does the Polish legal system finally align with? Since 2005, a security measure involving therapy has been imposed on sex offenders. Following the amendment to the Penal Code that took effect on July 1, 2015, significant changes were introduced concerning security measures. Currently, under Article 93a of the Penal Code, a security measure imposed on a perpetrator of a crime related to a sexual preference disorder may include, in addition to therapy, electronic monitoring of residence and confinement in a psychiatric facility. Furthermore, according to Article 96 § 1 of the Penal Code, individuals convicted of offenses outlined in Articles 197–203 (pertaining to Chapter XXV of the Penal Code, titled “Offenses Against Sexual Freedom and Decency”, excluding Article 204) serve their sentences within a therapeutic framework.⁶

Based on the aforementioned, it can be concluded that the Polish legal system for addressing sexual offenders was initially founded on the clinical (therapeutic) work model. However, with the introduction of the Register in 2017, a pronounced emphasis on the community protection model has emerged. Consequently, it can be stated that a mixed model currently operates within the Polish legal framework. It is challenging to assert that one model predominates over the other, as both therapy and the Register significantly impact the rights and freedoms afforded to sexual offenders.

In this study, I will refrain from discussing the influence of the clinical work model on the Polish legal system and will focus solely on issues pertaining to the Register, which represents a recent development within the Polish legal landscape.

The term “sexual crime”, as defined in the aforementioned Act, encompasses offenses against sexual freedom specified in Chapter XXV of the Penal Code, excluding the following:

1. Article 201 (incest) of the Penal Code, unless committed against a minor;
2. Article 202 (public presenting of the pornography) § 1 of the Penal Code;
3. Article 202 § 3 of the Penal Code, involving the presentation of pornographic content depicting violence or the use of animals;
4. Article 202 § 4a of the Penal Code;
5. Article 202 § 4b of the Penal Code, concerning the storage or possession of pornographic content depicting a produced or altered image of a minor engaged in a sexual act;
6. Article 202 § 4c of the Penal Code; and
7. Article 204 (Organization of prostitution) § 1 and 2 of the Penal Code, unless committed against a minor.

It is essential to clarify the scope of this term, as the Register of Sexual Offenders solely collects data pertaining to the perpetrators of the aforementioned offenses.⁷

As stipulated in Article 4 § 1 of the Act on the Protection of Sexual Offenders, the Register comprises three distinct databases:

6 Strzelec, „Rejestr Sprawców Przestępstw na Tle Seksualnym”, 706.

7 Nawrocki, „Informatyzacja publicznych rejestrów karnych”, 244.

1. The Register with limited access;
2. The Public Register; and
3. The Register of individuals for whom the State Commission for the Investigation of Cases Related to Sexual Freedom and Decency Against Minors Under 15 Years of Age has issued a decision to include them in the Register.

The Register of Sexual Offenders is maintained by the Minister of Justice, although the Information Office of the National Criminal Register, which operates under the Ministry of Justice, is responsible for its practical management. This Register is maintained within an information technology system.⁸

The Register with limited access contains data on individuals who have been definitively convicted of the crimes referenced in the aforementioned catalogue, those against whom criminal proceedings have been conditionally discontinued, individuals subject to security measures, and minors who have been subjected to educational, corrective, or therapeutic measures for offenses listed in the catalogue, excluding Article 200 § 1 of the Penal Code.

The Public Register collects data on individuals previously mentioned if the legal classification in the judgment refers to Article 197 § 3 item 2 or § 4 of the Penal Code, or if they have committed an offense from the aforementioned catalogue after having been previously sentenced to imprisonment without the conditional suspension of its execution for a related offense, provided any of these offenses were committed against a minor.

Data may be excluded from both the Register with limited access and the Public Register only upon a court's ruling (Article 9, paragraphs 1–4 of the Act on the Protection of Sexual Offenders). Current judicial practice indicates that applying the provisions of the Act on Counteracting Sexual Crime Threats is complex, as courts increasingly express concerns that the regulations may conflict with the Constitution of the Republic of Poland and international human rights agreements, which has led to refusals to apply the provisions of the Act and, consequently, to the exclusion of data from the Public Register.

2. HISTORY OF OFFENDERS' REGISTRIES

Over the past decade, the significance of data privacy protection has increasingly come to the forefront of public discourse. This heightened awareness is particularly evident in the realm of data flow regulation during crime prevention efforts, which has garnered substantial attention following legislative updates within the European Union from 2016 to 2018.

Notably, Poland's criminal registry of sexual offenders stands out as the only public registry of its kind not only within the European Union but across the entire European region. Despite its unique status, this registry remains relatively unknown, both internationally and domestically within Poland. This obscurity has

⁸ Ibid., 245;

rendered the topic of sexual offender registries a contentious issue within societal consciousness, resulting in a scarcity of comprehensive research in this area.

Before delving into the primary focus of this paper, it is essential to examine the historical context of sexual offender registries globally. The United States boasts the longest-standing history of publicly accessible criminal registries, which has undoubtedly influenced Polish legislative developments. Former Minister of Justice Z. Ziobro has frequently referenced this American model as a source of inspiration for similar act.⁹ In academic papers it is also often mentioned that similar institutions exist in France and Germany¹⁰, but we would need to emphasise here that those registries don't have public character.

Registries of sexual offenders in the United States of America began to appear in early 1930s.¹¹ Initially, they were the prerogative of local legislations (cities and counties), later they began to be available on the level of states (Florida, since 1937). Registration was conducted, as a rule, at a police station, convicts were photographed and fingerprinted. The personal data of criminals with the indication of the place of residence after release were entered into the registry. The local authorities hoped that the registration requirement would make the stay of convicts on the territory of the city or district undesirable which is supposed to positively influence the criminal situation in a state.¹²

The first formal sex offender registry in the United States was established in 1947 in California, marking the beginning of a systematic approach to monitoring individuals convicted of sexual offenses. Over the subsequent two decades, comparable registries were introduced in five additional states: Alabama, Arizona, Florida, Nevada, and Ohio.

These early registries were designed to collect and maintain essential identifying information, including offenders' names, residential addresses, and other personal details. Their primary function was administrative and investigative: they enabled law enforcement agencies and judicial authorities to monitor offenders' whereabouts and to facilitate criminal investigations where relevant.

Importantly, access to these registries was strictly limited to authorized governmental actors. Unlike contemporary sex offender registration systems, which

9 Ziobro wypowiada wojnę zbroczcom: „Ustala się szczególne środki ochrony obywateli przed przestępczością na tle seksualnym” opublikowano: 18 grudnia 2015, (“Ziobro Declares War on Sexual Predators: ‘Special Measures Are Being Established to Protect Citizens from Sexual Crime’” PoliticsPublished: 18 December 2015) URL: <https://wpolityce.pl/polityka/275542-ziobro-wypowiada-wojne-zbroczcom-ustala-sie-szczegolne-srodk-i-ochrony-obywateli-przed-przestepczoscia-na-tle-seksualnym?strona=1>

10 Justyna Ryter, Erwin Ryter, „Rejestr sprawców przestępstw na tle seksualnym a prawo do prywatności i prawo do bycia zapomnianym w świetle ogólnego rozporządzenia o ochronie danych osobowych (RODO), Dyrektywy Parlamentu Europejskiego i Rady (UE) 2016/680/ z dnia 27.04.2016 r. oraz innych ustaw”, *Probacja*, no. 4, (2018): 177–195.

11 Андрей Юрьевич Ключников, „Об институте реестра сексуальных преступников”, *Lex Russica* 73, no. 3, (2020):141.

12 Terry Thomas, *The Registration and Monitoring of Sex Offenders. A Comparative Study*, (London: Routledge, 2011), 28–29.

often include public notification components, the initial registries were not accessible to the general public. Instead, they functioned as internal mechanisms within the criminal justice system, intended to enhance oversight and support public safety objectives through institutional monitoring rather than community-based disclosure.¹³

Intensive development of the Institute of the Registry of sex offenders in the United States occurred in the 1990s.¹⁴ Following several widely publicized cases of sexual offenses against children, media coverage intensified and public concern grew substantially. As these incidents received sustained national attention, public expectations increasingly centered on the need for stronger measures to protect potential victims, particularly minors.

In 1994, Washington became the first state to implement a policy of community notification for individuals classified as its most dangerous sex offenders. This development marked a significant shift in sex offender regulation, as it introduced public access to certain offender information.

Prior to 1994, registration requirements in the United States were more limited in scope. Only a small number of states mandated that convicted sex offenders provide their residential addresses to local law enforcement authorities, and this information was generally restricted to official use. The introduction of community notification thus represented a transition from an internal monitoring model to a system incorporating elements of public disclosure.

Mentioned sex offender registries were either not accessible to the public or were limited to restricted access within a single municipality. A comprehensive, publicly accessible federal registry was not established until 2005, with the creation of the National Sex Offender Public Website (NSOPW), originally known as the National Sex Offender Public Registry (NSOPR).

Following the enactment of the Adam Walsh Child Protection and Safety Act, the federal system was expanded and renamed in honor of Dru Sjodin, a 22-year-old college student from Grand Forks who was abducted and murdered. The legislation significantly strengthened national standards for sex offender registration and notification and established a more unified federal framework.

The registry introduced a structured classification system that divides sex offenders into three tiers, based on the legal severity and nature of the committed offence. This tier-based model standardises registration requirements and determines both the duration of registration and the scope of monitoring obligations.

Individuals convicted of the most serious sexual offences are classified as Tier III offenders, representing the highest level of risk and regulatory oversight. Tier III typically includes offences involving aggravated sexual abuse, sexual acts committed by force or threat of force, and sexual offences against minors—particularly those involving coercion, violence, or victims below a specified age threshold. It may also encompass repeat sexual offenses and crimes involving kidnapping of a minor (when committed with a sexual intent).

13 Юрьевич Ключников, „Об институте реестра сексуальных преступников”, 140–150.

14 Ibid., 141.

Offenders classified under Tier III are generally subject to the longest registration periods, more frequent in-person verification requirements, and broader community notification measures compared to individuals assigned to lower tiers. Tier III includes:

- Coercion to have sexual intercourse under threat of violence against a person who is in a helpless state; inducement to have sexual intercourse or commit other sexual acts with a person under the age of 12;
- Second-level criminal cases (tier II) include the production and distribution of child pornography; the involvement of minors in prostitution; sexual intercourse with a minor over 13 years old.
- Those guilty of other “minor sexual crimes”, who face up to a year in prison, belong to the category of first-degree sex offenders (tier I) (this is possession of child pornography or committing other sexual acts with a person over the age of 13 and under the age of majority).

If a person commits a similar act during the period of public record it automatically falls into a more serious category.¹⁵

3. CRIMINOLOGICAL ASSESSMENT OF THE SEX OFFENDER REGISTRY SYSTEM

In the United States, the sex offender registry encompasses approximately 900,000 individuals convicted of relevant offenses, representing about 0.28% of the total population. This figure has exhibited a consistent upward trend over the past several years.¹⁶

Numerous researchers have questioned the efficacy of the registry in reducing sexual crimes overall, as well as its specific impact on decreasing the recidivism rates among sex offenders.¹⁷ An in-depth comparison of the level of responsibility among adults and minors who committed similar sexual crimes revealed that there were no significant differences between the two groups based on their registration status. Specifically, the analysis showed that individuals who were registered on the offender registry exhibited comparable levels of responsibility and culpability to those who had evaded registration requirements. This indicates that, despite differences in registration status, both registered persons and unregistered individuals demonstrated similar patterns of behavior and accountability in the context of these offenses. No noticeable distinctions were identified between the two groups regarding their involvement in or seriousness of the crimes committed.

15 Dru Sjodin webpage of the Public sexual offenders` registry: <https://www.nsopw.gov/about-nsopw>

16 Shawn M. Rolfe, Richard Tewksbury, „Criminal Justice Policies. The Intended and Unintended Consequences of Monitoring Individuals Convicted of Sex Crimes” in *Sexual Offending, A Criminological Perspective*, eds. Patrick Lussier, Eric Beauregard (New York: Routledge, Taylor and Francis Group, 2018), 63—83.

17 Юрьевич Ключников, „Об институте реестра сексуальных преступников”, 146.

It is frequently posited that analogous legislative frameworks enacted by various states are predicated upon misconceptions that are, in many cases, unfounded despite their widespread acceptance and reinforcement within society. These assumptions, which often lack empirical substantiation, have significantly influenced the formulation of laws pertaining to sexual criminality. Firstly, there exists a prevalent societal belief that individuals convicted of sexual offenses are inherently more susceptible to repeat offending, or recidivism, compared to other categories of offenders. This perception has contributed to the implementation of more restrictive and punitive measures aimed at this group, under the presumption of heightened risk.

Secondly, another common societal misconception is that the majority of sexual offenders are strangers to their victims, suggesting that these crimes predominantly involve unknown individuals rather than acquaintances or family members. This belief has implications for prevention strategies and public awareness campaigns, which often emphasize the danger posed by unfamiliar perpetrators rather than addressing the complexities of abuse within known relationships.

Official statistical data do not substantiate these prevailing assumptions. Empirical evidence indicates that the average recidivism rate among all released offenders in the United States between 2014 and 2019 stands at approximately 36%. Importantly, within this overall rate, only about 13–14% of individuals are documented to commit similar types of offenses upon reoffending. These figures suggest that the perceived high likelihood of repeat sexual offending is considerably overstated in societal discourse.¹⁸

Furthermore, statistical analyses reveal that the majority of sexual crimes are committed by individuals during their initial offense, with recidivism rates remaining relatively low in comparison to public perceptions. The data demonstrate that most sexual offenders do not reoffend in a manner consistent with their initial crime, thereby challenging the notion that sexual offending is predominantly a recurrent behaviour.

Empirical research consistently indicates that a significant proportion of victims of sexual crimes have prior knowledge of their attackers. Court cases and investigative reports reveal that the majority of individuals found guilty of sexual offenses against both children and adults are often friends or relatives of the victims, rather than strangers. This pattern challenges the common societal perception that most sexual offenses are committed by unknown perpetrators lurking in public spaces.

Furthermore, a specific study examining the dynamics of sexual abuse and exploitation provides quantifiable insights into this phenomenon. According to the findings, only approximately 9% of perpetrators involved in cases of child sexual abuse had no prior relationship or acquaintance with their victims. Similarly, in cases of adult sexual exploitation, the proportion of offenders who were previously unfamiliar with their victims rises only slightly to about 28%.¹⁹

18 Richard Tewksbury, „Sex offender registries as a tool for public safety. Views from registered offenders”, *Western Criminology Review* 7, no.1, (2006): 2.

19 Elisabeth Letourneau, „Effects of South Carolina's Sex Offender Registration and Notification Policy on Deterrence of Adult Sex Crimes”, *Criminal Justice and Behavior* 37, (2010): 550.

It is hard to measure if the sex offender registry actually reduces crime. This is because the official statistics mix two different things: actual sexual offenses, and simple failures to register with authorities. Some investigators claim that it is precisely the violation of the registration responsibilities of criminals due to which the recidivism of American sex offenders is most often statistically reduced.²⁰

The study of the effectiveness of the registry institute should be distinguished from the perception of this institution by society and practicing lawyers. Society is very supportive of the registry, considering it as an effective tool to combat sexual crime. About 4/5 of ordinary American citizens have a positive attitude towards the registry, and there is unanimity among politicians and judges. Results from the studies also do not support the supposition that sexual offenders who fail to register are more sexually dangerous than those who comply with registration requirements. Specifically, results indicated that approximately 10% of sex offenders had registry violation convictions across an average follow-up period of about six years. Of those who failed to register, 11% also had a sexual recidivism charge compared with 9% of compliant registrants.²¹

A different, more critical attitude towards the registry could be found amongst those who maintain the registry, as well as amongst those who are engaged in the rehabilitation and treatment of sexual offenders.²² Researchers who are engaged into the mandatory treatment of sex offenders, usually disapprove of the requirement to publish data on sexual offenders. In practice, from 1/4 to 1/3 of adult Americans visited the resource at least once, hence, for the biggest part of society it remains unused.²³

However, the usefulness of the registry for law enforcement agencies and society is substantially reduced by the incompleteness and irrelevance of the data contained in it. Most often, violations relate to the place of residence of sex offenders, that is, information that is most important from the point of view of the purposes of the registry.

The problem is based on the shortage of personnel servicing registries, underfunding, and mistakes, including those made by convicts themselves when they intentionally do not perform registration duties. Some of them proceed from the fact that failure to fulfill registration obligations is a minor violation compared to the consequences of prolonged use in a publicly accessible registry, which causes problems with finding a place of work or residence.

It is officially estimated that about 5–6% of the criminals included in the register have disappeared, 18.5% have been re-imprisoned, 8.9% live outside the registration state and even 0.2% of the persons died while their information is still available in the registry, (in particular, the lack of a tendency to decrease the level of sexual

20 Jill Levenson, Elizabeth Letourneau, Kevin Armstrong, Kristen Marie Zgoba, "Failure to Register as a Sex Offender: Is It Associated with Recidivism?" *Justice Quarterly* 27, no. 3 (2010): 305–331.

21 *Ibid.*, 322.

22 Jill S. Levenson, David A. D'Amora, Andrea L. Hern, „Megan's Law and its Impact on Community Re-Entry for Sex Offenders", *Behavioral Sciences and the Law* 25, no. 4, (2007): 596.

23 *Ibid.*, 596.

crime, the constant rate of recidivism among persons subject to registration), Interesting fact that the victims of sexual crimes support mandatory treatment of sex offenders, but disapprove the requirement to publish data on sex offenders.

To better illustrate the potential negative consequences of sex offender registries as a method of crime prevention, it is instructive to examine the contemporary experience of the United States of America. At the outset, it must be emphasized that direct comparisons between the United States and Poland are inherently limited due to substantial differences in demographic composition, geographic scale, cultural norms, and religious influences. These structural differences make it difficult to draw definitive conclusions about the relative effectiveness of identical crime prevention strategies implemented in both contexts.

Furthermore, it is important to note that Poland is consistently regarded as having one of the lowest rates of sexual offenses in both Europe and globally. According to data published by the United Nations, Poland records approximately 1.3 reported rape cases per 100,000 inhabitants, compared to 41.4 cases per 100,000 inhabitants in the United States.²⁴ This significant disparity raises questions about the rationale for adopting or expanding policies modelled on a system developed in a country facing a markedly higher incidence of such crimes.

Even within the United States—where the prevalence of sexual offenses is considerably higher and where sex offender registries are therefore expected to have a broader scope of application—their effectiveness remains subject to considerable debate. Empirical evidence suggests that these registries do not significantly reduce recidivism rates or prevent future offenses. For instance, in the state of Florida, the number of registered sexual offenders exceeded 70,000 as of 2017.²⁵

In Florida, legal restrictions imposed on registered sexual offenders (RSOs) are particularly stringent. Under Florida Statute 775.215, RSOs are prohibited from residing within 1,000 feet of schools, childcare facilities, parks, or playgrounds. However, local jurisdictions—such as Broward County, Miami-Dade County, and Monroe County—often impose even more restrictive residency requirements. As a result, individuals attempting to comply with these overlapping regulations frequently face severe limitations in accessing lawful housing.²⁶

Consequently, many RSOs are effectively forced into spatial concentration, forming clusters or informal colonies in areas where residency restrictions are less rigorously enforced. A well-known example is the encampment that emerged near the Julia Tuttle Causeway, where numerous individuals lived under precarious conditions due to the lack of legally permissible housing options.

The social consequences of such policies are equally significant. Registered offenders often experience profound stigmatization, which severely restricts their ability to reintegrate into society. This stigma not only limits employment opportunities but also exacerbates housing instability. In many cases, individuals are unable

24 <https://data.unodc.org/datareport/violent-offences> [27.10.2024]

25 Joelle Lee-Silcox „Exploring the Geography of Sexual Offender Residency Issues in Flori”, *Florida Geographer* (2017): 48.

26 *Ibid.*, 2.

to secure accommodation that complies with legal requirements, effectively rendering them socially and economically marginalized.

One illustrative case is Miracle Village, a residential community in Florida that has become a refuge for individuals convicted of sexual offenses. Due to widespread societal exclusion and legal restrictions, many RSOs perceive this community as one of the few viable housing options available to them. Miracle Village, sometimes colloquially and controversially referred to as a “pedophile village”, is home to over one thousand residents who form a tightly knit community out of necessity rather than choice.²⁷

In conclusion, while sex offender registries are often introduced with the intention of enhancing public safety, the American experience demonstrates that such measures may produce unintended and counterproductive outcomes. These include the spatial segregation of offenders, increased social stigmatization, and barriers to reintegration, all of which may ultimately undermine the long-term goals of crime prevention and community safety.

It can be concluded that the registry creates a false sense of security, at the same time increases the feeling of fear in society. It is difficult to imagine the emotions of a person who has discovered that a sex offender lives in the neighborhood.

4. POLISH SEX OFFENDERS' REGISTRY AND GDPR REGULATION

However, the effectiveness of this crime prevention strategy remains a topic of debate. In Poland, as was mentioned, a new registry for sexual offenders was introduced in 2017.

The Polish Sex Offenders Registry comprises two distinct modules: a restricted-access register and a public register. The restricted-access register contains information about individuals convicted of sexual crimes, established under the Act of 13 May 2016 aimed at countering sexual crime threats. According to Article 12 of this act, individuals have the right to ascertain whether their data is included in this register.

Conversely, the public register serves as an accessible database that details the most dangerous sexual offenders, focusing primarily on those convicted of child rape (involving minors under 13 years old) and rapes characterized by extreme brutality. Unlike its American counterpart, the Polish registry also publicly discloses sentencing information, including the length of imprisonment, nature of the crime, date of sentencing, and the court that issued the ruling. This transparency aims to enhance public awareness and safety regarding sexual offenders within Polish society.

Firstly, it supposed that the convicted perpetrators could request their data not be included in the public Registry up until the first of October of 2017 but after the

²⁷ <https://www.bbc.com/news/magazine23063492#:~:text=It%20was%20established%20in%202009%20by%20pastor,Some%20residents%20have%20no%20contact%20with%20minors> [27.10.2024]

statement of the High Court of the Republic of Poland that such regulation would be nonconstitutional and would violate the fundamental principle of „*Lex retro non agit*” all information about the convictions before the inaction of the registry were erased in its final version.²⁸

The registry was supposed to be supplemented with a publicly available map of sexual crime threats, which includes the places of sexual offenses and the places of residence of offenders but this option wasn't included in the final version.

Access to the Public Register is unlimited. There is no fee for providing information from the Sex Offenders Register. Also is fourth mentioning that simultaneously with The Register the regulation (EU) 2016/679 of the European Parliament on 27 of April 2016 on the protection of individuals and information privacy in the European Union (EU) and the European Economic Area (EEA) commonly known as the GDPR, entered into force.

It is valid throughout the European Union, including the Republic of Poland, since May 25, 2018, and has revolutionized the perception of issues related to the protection of personal data. Individuals have acquired a number of new rights, the meaning of which is largely to intensify their protection, more broadly understood as the so-called right to privacy. An important innovation is the introduction in Article 17 (1) of the GDPR of the so-called right to be forgotten, also called the right to delete data, which from the very first moments of the GDPR has aroused particular interest of individuals, and therefore it can be estimated that sooner or later it will also draw the attention of convicted persons.

This leads us to the question: *does the former offenders can ask for the data erasure after it has been uploaded to the registry?* Or in more simple way: *does the internal Polish regulation violate the requirements of the GDPR?*

First what should be mentioned here is that according to the GDPR Art. 2 „... Regulation does not apply to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security”.²⁹ This clause in our opinion excludes any possibility of using the GDPR requirements in the topic of crime prevention activities provided by any member State of the European Union. Which is also allows us to conclude that such registries could be shortly implemented in other European countries as well. Hence, the answer for the second question should be a negative one.

28 <http://www.sn.pl/sites/orzecznictwo/OrzeczeniaHTML/v%20kk%209-19.docx.html>. The presented analysis leads to the conclusion that the Act of 13 May 2016 on Counteracting Threats of Sexual Crime (consolidated text: Journal of Laws of 2018, item 405, as amended), insofar as it requires the inclusion in the public Register of data concerning persons who committed the offenses specified therein prior to the entry into force of this legal act, does not satisfy the requirement of compliance with the principles of *lex retro non agit* and *nullum crimen (nulla poena) sine lege anteriori*, as set out in Article 1 § 1 of the Criminal Code. No such doubts arise with respect to the inclusion of the data of those persons in the Register with restricted access, due to its non-public character, which allows for the conclusion that such an entry is not equivalent to the application of a criminal punitive measure. [27.10.2024]

29 Article 2 of GDPR/ General Data Protection Regulation.

This attitude is reflected by the Art. 86 of GDPR which states that personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation³⁰.

Despite this fact many researches confirmed³¹ that there is some kind of a discrepancy between the GDPR regulation and the Act of 13 May 2016 on countering threats of sexual crime.

The legislator first has considered the right to influence the content of the Register to the perpetrators and the courts.

The principle is that the cancelation of the conviction, that is, in fact “forgetting the act of the offender” occurs by law after the expiry of the periods provided in Article 107 of the Criminal Code of the Republic of Poland, and only on demand of the convicted person.

According to this provision, the court may decide the conviction to be cancelled after the expiry of 5 years at the earliest. The convicted person should also not commit any other crimes or other violations of law during this period, while at the same time, the sentence was not more than 3 years of imprisonment.³² This provides us with a direct discrepancy with the GDPR requirements which openly guarantee the right to erasure of information from public access straight after the demand of the person to whom this data is connected.

5. CONCLUSIONS

As was mentioned by many international and national organisations, public registries remain to be a highly controversial method of sexual crimes prevention.

Topic of the public registry’s effectiveness still wasn’t properly analysed in Polish academic papers and in most of the published articles it received positive feedback.³³

We are rather considering the registry as a consequence of the penal populism misused in governmental politics. The essence of penal populism lies in its strong connection to societal fears of crime and the public’s demand for harsher penalties and punitive measures, fostering an intensely punitive atmosphere. This climate is

30 Article 86 of GDPR/ General Data Protection Regulation.

31 Agnieszka Grzelak, *RODO Ogólne Rozporządzenie o Ochronie Danych Komentarz*, (Warszawa: Wydawnictwo Wolters Kluwer:2022), 1034.

32 Ryter, Ryter, „Rejestr sprawców przestępstw na tle seksualnym a prawo do prywatności i prawo do bycia zapomnianym w świetle ogólnego rozporządzenia o ochronie danych osobowych (RODO)”, 177–195.

33 Ibid.,177–195.

marked by a disproportionate emphasis on retributive justice within the framework of criminal law. Essentially, populism is most often based on very strong demagoguery. It is essentially too, the same or very similar when it comes to penal populism.³⁴ The literature identifies several reasons that explain penal populism. First, in England and Wales, Anthony Bottoms, and in the U.S. David Garland, point to the insecurities in postmodern societies, which are characterized by risk, economic transformations, globalization, personal insecurity, and a loss of trust in state institutions³⁵. A victim advocacy group, reports that only a small percentage of new child sexual abusers have a prior sex offense record, making tracking them difficult. Despite this difficulty, law enforcement agencies across the country ostensibly rely on sex offender registries to attempt to track these types of predators after certain crimes have been committed.³⁶

Also some articles criticised it as the register should be escalated to bigger amount of the crimes (for instance in case of the murders committed with the necrophilia motive).

Often these papers speculate on other offender registries in European countries such as VISOR in the UK or FIJAIS in France, forgetting to mention that these registries are not publicly available.³⁷

On the other hand, The Helsinki Foundation for Human Rights claims that "a public registry is not an effective instrument against the risk of sex crimes." The HFHR is not against introducing into Polish law a mechanism that would register sex offenders but the publicly available source is openly criticized.³⁸

Polish Sexological Society also has expressed their concerns regarding the registry effectiveness.

Firstly, a comprehensive long-term analysis of the effectiveness of public registers in various countries consistently indicates that these registers do not lead to a reduction in the rates of sexual recidivism. In fact, public registers are entirely ineffective in mitigating the threat of sexual offenses.

34 Milan Škulić, Natalija Lukić, "The explanation of the main characteristics of penal populism and examples of penal populism in some criminal law provisions and planned amendments of the Criminal Code of Serbia", *Crimen*, no.1 (2025): 3.

35 Ibid.,9.

36 Justin P. Rose, "Where Sex Offender Registration Laws Miss the Point: Why a Return to an Individualized Approach and a Restoration of Judicial Discretion in Sentencing Will Better Serve the Governmental Goals of Registration and Protect Individual Liberties from Unnecessary Encroachments", *Mitchell Hamline Law Journal of Public Policy and Practice* 38, no. 1 (2017): 9.

37 In the United Kingdom (retrieved from: <https://www.ms.gov.pl/pl/informacje/news,9806,ruszyl-rejestr-sprawcow-przestepstw-na-tle.html>, on 4 December 2018), a register of perpetrators of violent and sexual offences (VISOR) was established. In France (retrieved from the same source on 4 December 2018), the so-called automated judicial register of sexual offenders (FIJAIS) was created. It constitutes a personal judicial register, similar to the automated fingerprint register, the national DNA database, and the national criminal register.

38 <https://www.liberties.eu/en/stories/public-registry-of-sex-crime-offenders-in-poland/7358> [27.10.2024]

Secondly, the existence of these registers does not lower the overall incidence of sexual crimes, suggesting that they fail to serve a deterrent function for general prevention.³⁹

Thirdly, the presence of such a register significantly hampers the therapeutic options available for sex offenders. For those individuals who are required to be listed, particularly those subject to lifetime registration under Article 106a of the Penal Code, there is little hope for reintegration into society. This limitation severely restricts their opportunities for therapy and resocialization, ultimately hindering efforts to combat sexual crime.

Fourthly, public registers of sex offenders not only fail to prevent sexual offenses but also do not alleviate societal anxiety associated with such crimes. On the contrary, there exists an inverse relationship: the establishment of these registers tends to heighten public anxiety related to sexual offenses. Additionally, the identification of high-risk locations, as referenced in the statute, is likely to exacerbate this anxiety. This further substantiates the argument that the creation of a public Register of Sexual Offenders is primarily a populist measure.⁴⁰

A more effective alternative might be to enhance the electronic monitoring system, which is currently applicable as a security measure for offenders convicted under Articles 197, 198, 199 § 2, or 200 § 1 of the Penal Code, particularly in cases linked to sexual preference disorders. It would be prudent to assess the efficacy of electronic monitoring of residential locations concerning its impact on recidivism.⁴¹

Moreover, the Register introduces a new, previously unrecognized form of criminal law response to prohibited acts. The inclusion of data in the Register serves a penal function by making the verdict public (as per Article 39, point 8 of the Penal Code) and imposes a more severe burden on the offender, as the Register also publicly displays their image—something that cannot be accomplished through the aforementioned penal measure. Furthermore, data in the Register are typically deleted upon the expungement of the conviction; however, restrictions outlined in Article 106a of the Penal Code prevent the expungement of sentences involving imprisonment without conditional suspension.

Another significant concern regarding the Register is the extent of information it contains, which is accessible without limitation (per Article 16 of the Act on Sexual Offences). The public Register includes data identical to that in the restricted-access Register, with the exception of certain personal identifiers, such as the names of parents, the mother's maiden name, the age of the minor victim at the time of the offense, PESEL identification number, and registered and actual addresses of residence.

39 Uchwała Zarządu Głównego Polskiego Towarzystwa Seksuologicznego z dnia 22 stycznia 2016 <https://pts-seksuologia.pl/sites/strona/50/uchwala-zarzadu-glownego-polskiego-towarzystwa-seksuologicznego-z-dnia-22012016r> [27.10.2024];

40 Uchwała Zarządu Głównego Polskiego Towarzystwa Seksuologicznego z dnia 22 stycznia 2016 <https://pts-seksuologia.pl/sites/strona/50/uchwala-zarzadu-glownego-polskiego-towarzystwa-seksuologicznego-z-dnia-22012016r> [27.10.2024];

41 Uchwała Zarządu Głównego Polskiego Towarzystwa Seksuologicznego z dnia 22 stycznia 2016 <https://pts-seksuologia.pl/sites/strona/50/uchwala-zarzadu-glownego-polskiego-towarzystwa-seksuologicznego-z-dnia-22012016r> [27.10.2024];

The information included in the public Register encompasses identifying details (such as surname, first names, gender, date of birth, facial image, and the town of residence), specifics of the offense (e.g., date and location of commission, legal qualification, case reference number, and imposed penalties), and details regarding enforcement proceedings (e.g., commencement and conclusion of the sentence, location of execution, and conditional releases).

The dissemination of information from the Public Register poses significant risks. The publication of such detailed data, including images, contributes to an expanding surveillance culture surrounding individuals convicted of sexual offenses, thereby increasing the likelihood of stigmatization.⁴²

The stigma associated with a conviction persists not only during the prison sentence but also post-release. Securing employment for individuals listed in the National Criminal Register is often challenging. Employers' reluctance to hire individuals with a criminal history may be amplified by their presence in the publicly accessible Register of Sex Offenders.

While an employer may consider hiring someone previously convicted of a lesser offense, such as driving under the influence, they may be less inclined to employ an individual convicted of disseminating pornographic content involving minors—especially since such information is publicly available, potentially affecting the employer's reputation.

This dynamic impacts the resocialization process, as frustrations stemming from difficulties in obtaining employment may lead to further criminal behaviour, including sexual offenses.

The unrestricted access to the Register presents a serious risk of retaliation against sexual crime offenders. It is not difficult to envision scenarios where individuals listed in the Register face harassment from their communities. Similar concerns were raised by Jarosław Warylewski in 2001, who, while analysing sex offender registers in the USA and England, noted that despite some positive aspects, there are numerous dangers associated with their implementation. Warylewski highlighted that in England, 88% of respondents supported making certain data from the National Sex Offender Register public, underscoring the influence of penal populism in the legislative process.⁴³

Experts' apprehensions regarding the publication of data contained in the Register were validated by instances requiring police intervention in several cases in England. Although the severity of certain offenses may be lower than that of rape, individuals convicted of lesser crimes may still be labelled as "rapists" or "pedophiles" solely due to their inclusion in the Register.

Also, current police statistics regarding the sexual crimes didn't show significant changes in the amount of the committed crimes (amount of committed rapes in 2017 in whole country was 1262; in 2019 was 1354 and in 2021 total amount of registered rapes was 1088), simultaneously the percentage of the solved rape crimes

42 Strzelec, „Rejestr Sprawców Przestępstw na Tle Seksualnym”, 709.

43 Ibid.

getting higher every year after the registry was enacted. According to official data percentage of rape crimes where the offender was found rose from 82.7% in 2017 to 85% in 2019 and 88% in 2021.⁴⁴

Hence, the registry could be hardly seen as a method of crime prevention, but rather as an additional instrument for Police investigation.

Should be also mentioned that topics of criminological effectiveness of the registry is often complicated due to high stigmatization of sexual crimes.

The provided novelization should be criticized due to the lack of preciseness. Only after two years the High court of the Republic of Poland has actually excluded the „Lex post factum” uncertainty, as at the beginning offenders of all relevant sexual crimes (even those which were committed before the Act of 13 May 2016 on countering threats of sexual crime) should be automatically included into the registry. Hope this publication will raise awareness of the current lacunas in the European legislation and will help to avoid similar registries applications in other members of the European Union.

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44 <https://statystyka.policja.pl/st/przestepstwa-ogolem/przestepstwa-kryminalne/zgwalcenie/122293,Zgwalcenie.html> [24.10.2024]

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KRIMINOLOŠKA I ETIČKA PROCENA REGISTRA SEKSUALNIH PRESTUPNIKA REPUBLIKE POLJSKE

REZIME

Ova studija posvećena je etičkoj i kriminološkoj oceni Registra seksualnih prestupnika u Republici Poljskoj. Tema je i dalje kontroverzna i nedovoljno zastupljena u postojećoj naučnoj literaturi. Stoga autor nastoji da pruži sveobuhvatnu ocenu ovog registra. U radu se ispituje iskustvo Poljske u evidentiranju i klasifikaciji osuđenih seksualnih prestupnika, pri čemu se registar ističe kao značajan instrument krivičnog prava u prevenciji seksualnih delikata sa elementima nasilja. Osim toga, autor procenjuje delotvornost registra i vrši poređenje sa sličnim praksama u zemljama Zapadne Evrope. Posebna pažnja posvećena je poljskom javnom registru seksualnih prestupnika, jednom od malobrojnih javno dostupnih registara izvršilaca krivičnih dela u Evropskoj uniji, koji funkcioniše na osnovu Zakona od 13. maja 2016. godine, usmerenog na suzbijanje pretnji od seksualnog kriminaliteta. Ovom registru može se pristupiti sa bilo kog uređaja širom sveta, što ga čini sličnim određenim javnim registrima u Sjedinjenim Američkim Državama. U članku se razmatra usklađenost tako strogih propisa sa Opštom uredbom o zaštiti podataka (GDPR), koju je donela Evropska unija, kao i pitanje da li se ovakav pristup prevenciji kriminaliteta može smatrati dovoljnim. Analizom implikacija registra u širem kontekstu etičkih pitanja i zaštite podataka, u radu se nastoji doprineti aktuelnoj raspravi o ravnoteži između javne bezbednosti i individualnih prava.

Ključne reči: javno dostupni registri seksualnih prestupnika, krivično pravo, ljudska prava, krivična odgovornost za seksualne delikte, kriminologija, komparativne studije.

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