

THE POTENTIALS OF THE SO-CALLED “*MARIJA’S LAW*” IN COMBATING PEDOPHILIA

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Abstract. *Sexually-based offenses, especially those involving pedophilia, generate a great interest of the professional and general public alike. For some time, there have been attitudes and demands in the public discourse that the perpetrators of these crimes should be subject to more severe punishment and other criminal measures. In 2013, the National Assembly of the Republic of Serbia passed the Act on Special Measures for the Prevention of Crimes against Sexual Freedom involving Minors, which is colloquially known as “Marija’s Law”, after a minor victim of rape and subsequent death. This Act has established a special criminal justice regime pertaining to sexual offenders of a pedophilic orientation. The distinctive features of “Marija’s Law” are the introduction of special measures and special records intended for the perpetrators of these crimes. In addition, this Act excludes and partly modifies the application of some general criminal law institutes in relation to sexual offenders, particularly those that provide corresponding benefits to criminal offenders.*

Key words: *minors, crimes against sexual freedom, “Marija’s law”.*

1. INTRODUCTION

Combating and preventing sexually-based offenses is a very delicate issue, especially if they are committed against juveniles. Whether special criminal sanctions, treatment, or other measures should be applied against the offenders of these criminal acts is a question that has triggered considerable interest of both professional and general public. In 2010, Serbia ratified the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (hereinafter: the Convention). Among other things, the Convention envisages that signatory state parties shall ensure that acts of sexual abuse and exploitation are prescribed as criminal offences in their criminal codes, and further suggests that state parties shall provide corresponding sanctions and measures aimed at combating and preventing such offences. The legal provisions of the Serbian Criminal

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Code (CC) are not in full compliance with the Convention, which is an issue to be addressed in one of the prospective Criminal Code revisions (Miladinović-Stefanović 2014: 568-570).

A special criminal justice regime for pedophiles was established in 2013 by adopting the *Act on Special Measures for the Prevention of Crimes against Sexual Freedom involving Minors*. It does not establish special criminal sanctions for sexual offenders but it prescribes corresponding measures and other instruments. This Act is colloquially referred to as "*Marija's Law*", being named after a minor victim of rape and subsequent death.

2. GENERAL CHARACTERISTIC OF *MARIJA'S LAW*

"*Marija's Law*", according to Article 1 thereof, prescribes special measures that apply to perpetrators of crimes against sexual freedom involving juveniles and regulates the keeping of special records of persons convicted of committing such offences. In addition, in relation to respective perpetrators, it excludes the application of corresponding criminal law institutes that provide certain benefits to criminal offenders, and further contains special rules on the specific legal consequences of conviction. This provision implies a derogation of the general criminal law provisions contained in the Criminal Code, which should not be an issue due to the rule *lex specialis derogat legi generali*. However, in Serbian criminal legislation, special criminal law regimes usually have their *iustus titulus* in the Criminal Code, which was observed in case of the criminal law status of minors and legal persons (Articles 4 and 12 of the CC) but not in terms of "*Marija's Law*".

In Serbia, the criminal law regime concerning juveniles is regulated by the *Act on Juvenile Offenders and Protection of Juveniles in Criminal Law* (hereinafter: the Juvenile Offenders Act). The field of application of the Juvenile Offenders Act seems to be overlapping with the scope of "*Marija's Law*" because they both refer to the criminal law protection of juveniles. However, these legislative acts provide different kinds of protection: the Juvenile Offenders Act regulates procedural issues in the protection of juvenile offenders whereas "*Marija's Law*" is aimed at counteracting sexual offenses primarily involving pedophilia. Although the purpose of "*Marija's Law*" is explicitly stated in its official title (Act on Special Measures for the Prevention of Crimes against Sexual Freedom involving Minors), the legislator has considered it appropriate to reinforce the goal in the legal text. Thus, Article 2 of "*Marija's Law*" prescribes that its purpose is to "prevent the perpetrators of criminal offences against sexual freedom committed against juveniles from carrying out these acts." This provision may hardly have any practical value either for the interpretation or application of this Act because, as previously stated, it declares that which is obvious.

Ratione materiae and *ratione personae* are prescribed in Article 3 of "*Marija's Law*". This Act applies to offenders who commit the following crimes against juveniles as envisaged in the CC: 1) rape (Art. 178 par. 3 and 4); 2) sexual intercourse with an impaired person (Art. 179 par. 2 and 3); 3) sexual intercourse with a child (Art. 180); 4) sexual intercourse by abuse of position (Art. 181); 5) illicit sexual acts (Art. 182); 6) soliciting and procuring a sexual intercourse with a minor (Art. 183); 7) inducing or acting as an intermediary in prostitution (Art. 184 par. 2); 8) showing, procuring and possessing pornographic content and exploiting juveniles for pornography (Art. 185); 9) inducing or forcing a minor to attend sexual acts (Art. 185a); 10) abuse of computer networks or

other means of communication to commit criminal offences against sexual freedom of a minor (Art. 185b). Thus, taken into account are only those criminal offences against sexual freedom where the victims of crime are juveniles. In Serbian criminal law, the term *juvenile* refers to persons under the age of 18. Within this age group, there is a further distinction between *children* (persons under the age of 14) and *minors* (persons who have turned 14 but are still under 18). Thus, *Marija’s Law* applies in case a victim of the aforementioned crimes against sexual freedom is a person under the age of 18. On the other hand, Article 3 par. 2 of “*Marija’s Law*” prescribes that this Act shall not apply to juvenile offenders who have reached the age of 14 but are not 18 yet at the time of committing the crime, which means that this Act shall apply only to adult offenders, i.e. those who have turned 18 and older. Under the Serbian criminal law, persons (children) under the age of 14 certainly cannot be subject to criminal liability.¹

3. DEROGATIONS FROM THE GENERAL CRIMINAL LAW INSTITUTES

3.1. Prohibition of mitigating a sentence

The criminal law institute of mitigating a sentence implies that the court may impose a more lenient type of punishment than the prescribed one or issue a penalty lower than the prescribed special minimum for a specific criminal offense, within the limits prescribed by the law. Pursuant to Article 56 of the CC, the imposed punishment may be mitigated if: 1) the law expressly provides for statutory mitigation;² 2) the court has the authority to remit the awarded punishment, but that option has not been used; and 3) there are particular mitigating circumstances and the court finds that the purpose of the punishment may be accomplished by awarding a lesser sentence.

In Article 5 par. 1, “*Marija’s Law*” excludes the application of this institute to crimes against sexual freedom committed against juveniles. This is not a novelty in Serbian criminal legislation because the prohibition of mitigating a sentence was introduced by provisions amending and supplementing the Criminal Code of 2009; thus, Article 52 par.2 of the CC envisaged the prohibition on mitigating the imposed punishment for the explicitly enumerated crimes, including: rape, sexual intercourse with a helpless person, and sexual intercourse with a child (Art. 57 par. 2 CC). Therefore, the prohibition clearly refers to these three criminal offences but, in cases involving rape and sexual intercourse with a helpless (vulnerable or impaired) person, the CC does not make any distinction in terms of the victim’s age. It is obvious that the legislative procedure was not well-coordinated. In 2011, the Serbian Ombudsman submitted the *Initiative to amend the CC in the field of criminal law protection of victims of domestic violence and sexual abuse* (hereinafter: the

¹ The concept of a *child* under the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse corresponds to the concept of a *minor* in Serbian criminal law. In Serbian law, minors are divided into *younger minors* (persons who have reached the age of 14 but are under the age of 16 at the time of committing the crime) and *older minors* (persons who have reached the age of 16 but are under the age of 18 at the time of committing the crime) (Art. 112 par. 8-10 of the CC. and Art. 2 and 3 of Juvenile Offenders Act).

² According to the CC, a sentence may be mitigated in case the perpetrator has exceeded the limits of self-defense (Art. 19 par. 3); negligently caused danger or exceeded the limits of extreme necessity (Art. 20 par. 3); acted under coercion, force and threat (Art. 21 par. 2); has a significantly diminished mental capacity (Art. 23 par. 3); was unaware that the act was prohibited due to an avoidable *error iuris* (Art. 29 par. 3); committed an attempted criminal offence (Art. 30); an inciter or abettor has no personal relations, characteristics and circumstances that constitute an essential element of a criminal offence (Art. 36 par. 4).

Initiative), proposing that the prohibition of mitigating a sentence as envisaged in the CC should be applicable to all crimes against sexual freedom, regardless of the victim's age. The prohibition of mitigating a sentence related to sexual offenses in Serbian legislation is based on Article 27 of the Convention, which specifies that "each (state) Party shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness." Yet, some authors fittingly point out that the cited formulation does not insist on the stated prohibition (Miladinović-Stefanović, 2014: 571).

The prohibition of mitigating a sentence has been criticized since its introduction into our legislation in 2009, and the same arguments apply when it comes to its prescription in "*Marija's Law*". Thus, it is questionable whether this prohibition applies to the statutory mitigation as well (Stojanović, 2013: 124-125). For example, the CC provides that the attempted criminal offence may be subject to a more lenient punishment, but how does this provision apply to an attempted rape of a minor? The CC provision allows for the mitigation of punishment in case of attempted rape, whereas "*Marija's Law*" explicitly prohibits the mitigation, regardless of the stage in the commission of the criminal offence. This entails the following question: is it justifiable from the perspective of criminal policy that both *in abstracto* completed criminal act and an attempted criminal act shall receive an equal treatment, particularly when it comes to such heinous crimes such as sexual crimes against juveniles? Namely, relying on its discretionary authority, the court will not mitigate the punishment in case of an attempted rape if the court finds that it is not justified. If it is construed that the prohibition applies to the statutory mitigation as well, then it repudiates all those general criminal law institutes in terms of which the CC envisaged the possibility of mitigation (Delić, 2010: 238). On the other hand, when sentencing, the resourcefulness of the court should come into the foreground, as this area is not suitable for fixed legal regulation, which is also one of the common objections pertaining to this prohibition (Delić: 2010: 244).

In principle, the prohibition of mitigating a sentence is based on the legislator's assessment that courts are prone to adopt a lenient punitive policy. Such an assessment is criticized for not being based on a serious analysis of punitive policy (Lazarević, 2013: 421). Sparse research on this issue in Serbia indicates that punitive policy is relatively strict in cases involving sexual offenses (rape, in particular), which *inter alia* may be substantiated by the data about a moderate percentage of mitigated sanctions and the structures of prisons sentences imposed on sexual offenders (Ćirić et al., 2006: 121); from that point of view, the prohibition is disputable. In addition, it has been subject to another principal objection: the vague criteria for selecting the criminal offences it may refer to (Stojanović, 2013: 124). A number of most serious crimes (such as: aggravated murder, genocide, crimes against humanity, war crimes, etc.) are not covered by the prohibition of mitigation. To make the paradox even greater, some of these crimes are complex criminal offences which may include some forms of sexual violence (e.g. crimes against humanity, war crimes). But, the prohibition does not apply in such cases because neither the CC nor *Marija's Law* excludes the application of the mitigation institute in such crimes.

3.2. The prohibition of parole

The Serbian Criminal Code recognizes two types of parole: mandatory and optional (Ćorović, 2015: 102). The court must approve mandatory parole if all legal requirements have been met. The approval of optional parole is a discretionary right of the court,

regardless of whether the requirements have been met or not (Art. 46 of the CC). Optional parole is linked to the explicitly enumerated cases, including convictions for crimes against sexual freedom. However, “*Marija’s Law*” expressly provides in Art. 5 that the person convicted of a crime that falls under the regime of this Act *cannot be released on parole*. Bearing in mind such a legislative frame, the only correct interpretation is that the parole does not apply to offenders who committed crimes against sexual freedom involving minors; in cases where such victims are adults, the rules on optional parole apply. Of course, it gives rise to a principal question: why are crimes against sexual freedom committed against juveniles the only ones that are excluded from the parole regime?

3.3. Statutory limitation of criminal prosecution and execution of punishment

The CC distinguishes between the statutory limitation of criminal prosecution (Art. 103-104) and the statutory limitation of execution of punishment and security measures (Art. 105-107). As a rule, all criminal offenses and imposed penalties in our criminal law are subject to the statute of limitation, except for genocide, crimes against humanity and war crimes (which are regulated by Art. 370-375 of the CC), as well as the criminal offenses which pursuant to ratified international treaties cannot be subject to limitation (Art. 108 of the CC). The Convention (in Art. 33) provides that signatory state parties shall “ensure that the statute of limitation for initiating proceedings with regard to the offences [established by the Convention] shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.” Therefore, it does not insist on the non-limitation of the respective criminal offenses.

However, Article 5 par. 3 of “*Marija’s Law*” prescribes that *prosecution and execution of punishment* are not subject to the statute of limitation for crimes against sexual freedom which are committed against juveniles. Again, we may pose the principal question: it is justifiable to exclude these sexual offences (as well as the aforementioned crimes against humanity and international law) from the statute of limitation, whereas a number of very serious crimes still remain subject to the statute of limitation. It would be better if the legislator stipulated that the statute of limitation for crimes against sexual freedom committed against juveniles cannot start running until the injured party becomes an adult, which is in compliance with the provision in Article 33 of the Convention. This provision stipulates that the limitation shall be arranged in accordance with “the gravity of the offense in question”; therefore, the current solution that excludes the application of the statute of limitation does not follow this idea when it comes to the least serious crimes against sexual freedom committed against juveniles (Miladinović-Stefanović, 2014: 572-573).

4. LEGAL CONSEQUENCES OF CONVICTION PURSUANT TO *MARIJA’S LAW*

In Serbian criminal law, the legal consequences of conviction are measures which may be prescribed only by the (non-criminal) law, and which come into effect by the force of law that has established them, as a result of conviction for certain crimes or certain criminal sanctions (Art. 94 of the CC). They take effect only after the judgment (by which the offender is convicted or imposed a criminal sanction) has become final, whereby the time spent serving the sentence of imprisonment is not included in period of legal consequences. Legal consequences of conviction may be related to:

- a) the loss or forfeiture of rights: 1) termination of public functions; 2) termination of employment or termination of performing a particular job, or practicing a particular profession or occupation; 3) forfeiture of particular permit or license issued by decision of a government authority or local self-government authority (Art. 95 par. 1 of the CC);
- b) ban on acquiring or exercising certain rights: 1) prohibition of being appointed to particular public functions; 2) prohibition of acquiring a particular title, profession or occupation or promotion in services; 3) prohibition of acquiring a military officer rank, 4) prohibition of acquiring particular permits and licenses issued by the decision of a government authority or local self-government authority (Art. 95 par. 2 of the CC).

Article 6 of “*Marija’s Law*” provides that a conviction for a criminal offense against sexual freedom involving juveniles may produce the following legal consequences: 1) termination of a public function; 2) termination of employment or termination of practicing a particular profession or occupation related to work involving juveniles; 3) prohibition of being appointed to particular public functions; and 4) prohibition of acquiring a particular title, practicing a profession or occupation or obtaining promotion in services related to work involving juveniles. It is not difficult to conclude that these provisions are redundant because they only repeat two legal consequences that already exist in the CC (the termination or suspension of the exercise of certain rights). The legislator seems to have disregarded the fact that the specific legal consequences are prescribed by some other non-criminal laws regulating the performance and termination of certain public functions, conditions for the establishment and termination of employment, etc. Another problem is the prescribed time limit of legal consequences of conviction; whereas the CC limits the period to no longer than 10 years (Art. 96 par. 3), in *Marija’s Law* the period of legal consequences (primarily pertaining to prohibition of acquiring certain rights) has been doubled to 20 years (Art. 6 par. 3).

5. SPECIAL MEASURES PURSUANT TO *MARIJA’S LAW*

Article 27 par. 4 of the Convention envisages that the signatory state parties shall adopt measures for monitoring or supervision of convicted persons. In this context, “*Marija’s Law*” (Articles 7 to 12) establishes specific measures applicable to perpetrators of offences against sexual freedom. These measures are as follows:

- 1) *mandatory reporting to the competent authority of the police and the Directorate for the Execution of Criminal Sanctions*, whereby offenders are obliged to personally report to the the police department in their place of residence and the organizational unit of the Directorate for the Execution of Criminal Sanctions in charge of treatment and alternative sanctions (Probation Service), every month, not later than the 15th day of the month;
- 2) *prohibition on visiting young people’s communal meeting places*, such as school buildings, kindergartens, playgrounds, children’s events, etc.;
- 3) *mandatory visits to professional counseling and institutions*, whereby the offender is obliged to visit a professional counseling and other institutions according to the program prepared by the organizational unit (Probation Service) of the Directorate for the Execution of Criminal Sanctions;

- 4) *mandatory notification of change concerning the place of domicile, residence, or workplace*, whereby the offender is obliged to personally inform the competent organizational units of the police and the Probation Service about the change of residence, accommodation, or workplace within a period of 3 days from the change;
- 5) *mandatory notification of travel abroad*, establishing the offender’s duty to notify the competent organizational unit of the police at least three days before traveling abroad, and to provide information on the destination country, place and length of staying abroad.

The first question that arises in connection with these special measures pertains to their legal nature. The literature indicates their similarity with certain criminal sanctions and the legal consequences of conviction (Ristivojević, 2013: 326). However, they are not criminal sanctions because they are not ordered by the court. Under the letter of the law, these special measures are carried out after the convicted offender has served the imposed sentence of imprisonment; their execution is regulated by the *Act on the execution of non-custodial sanctions and measures* (hereinafter: the Probation Act) which stipulates that the person in charge of their implementation is the authorized person i.e. probation officer from the organizational unit of the Directorate for the Execution of Criminal Sanctions competent for treatment and alternative sanctions (Probation Service). Special obligations are not legal consequences of conviction because they are specifically regulated by “*Marija’s Law*” and take effect *ex lege*; on the other hand, the probation officer is required to prepare a program for the execution of special measures (Art. 59 par. 2 of the Probation Act). However, one cannot deny their similarity with the court-imposed obligations related to a suspended sentence with protective supervision, under Article 73 of the CC. Moreover, the Initiative of the Ombudsman has proposed the introduction of protective supervision after serving a full sentence, after which the court could impose any of the existing obligations or protective supervision envisaged in Article 73 of the CC which would be executed after the convicted offender is released from prison. As these measures cannot be classified into any of the existing criminal categories, it is pointed out in literature that they are definitely special, i.e. *sui generis* measures (Ristivojević, 2013: 328). However, bearing in mind that they are structurally very close to the existing obligations related to protective supervision, their “special” nature can be put into question. Thus, the proposal for introducing protective supervision after serving a full sentence seems to be a more acceptable solution than the existing special measures, considering the fact that protective supervision includes a wider range of obligations that may be imposed on the offender depending on the merits of the specific case, which is a commonly accepted solution in comparative criminal law.³

The wording of Article 7 of “*Marija’s Law*” indicates that special measures are applied cumulatively. The provision states: “The special measures that shall apply to criminal offenders referred to in Article 3 of this Act, after serving the sentence of imprisonment, are as follows: ...”(Art. 7). The process of their application begins by referral of the convicted offender to the Probation Service, whereby the offender is obliged to personally report to the probation officer within three days from the execution of the imposed criminal sanction; within the next three days, the probation officer is obliged to start preparing the program for the application of special measures and, to this end, establish cooperation with the

³ See: § 68f German Criminal Code (Kühl, Lackner, 2011: 505-508), Art. 76 Croatian Criminal Act (Turković et al. 2013: 112).

police, professional counseling and other institutions essential for their implementation. The program for the implementation of special measures must be prepared within eight days from the date when the offender reported to the probation officer, who is also obliged to inform the convicted offender about the program content and the consequences of default. The program has to be submitted to the court that rendered the first-instance decision, the police, counseling and other institutions that participate in its implementation. At the request of the competent court, the probation officer is obliged to submit a report on the implementation of the program within a period of three days. If the convicted offender does not comply with the special measures, the probation officer shall notify the court (Art. 60 of Probation Act). A failure to comply with the specific measures and a violation of the legal consequences of conviction constitute a misdemeanor punishable by a term of imprisonment from 30 to 60 days (Art. 16 of "*Marija's Law*").

The period of implementing these special measures shall not exceed 20 years after the sentence of imprisonment has been served (Art. 7 par. 2 of "*Marija's Law*"). A periodic control over the implementation of these measures is performed *ex officio* by the court that rendered the first-instance decision; thus, after the expiry of each consecutive four-year period from the date of starting the implementation of these measures, the court shall decide on the need for their further implementation. The convicted offenders who are subject to these measures are eligible to file a request for review of the need for future implementation of these measures. The request is submitted to the court that issued the first-instance decision, after the expiry of each consecutive two-year period from the date of starting the implementation of special measures. When deciding on the need for further implementation of these special measures, the court shall obtain reports of authorities and organizations responsible for their implementation.

In addition to these objections pertaining to the legal nature of special measures, some of shortcomings should be noted. Given the fact that the content of special measures restricts the offender's freedom of movement, some authors question their compatibility with Article 39 of the Constitution, which guarantees the freedom of movements; to be specific, it does not provide for its restriction for reasons which are envisaged in special measures (Ristivojević, 2013: 329). Some authors reasonably express "doubt in the capacity of special measures to provide for accomplishing the projected preventive effects" (Miladinović-Stefanović, 2014: 574). For example, it is still unclear how the legal system will provide for *in concreto* control over the application of perhaps the most significant measure: the prohibition of visiting communal meeting places for young people. The Probation Act contains no provisions on this issue, whereas the legal protection provided in "*Marija's Law*" (within the framework of misdemeanor law) is certainly insufficient. Indeed, from the standpoint of overall effectiveness of these measures, we may pose the following question: is the threat of sanction under misdemeanor law sufficient to deter a previously convicted pedophile from violating or obstructing the implementation of these special measures?

6. SPECIAL CRIMINAL RECORDS PURSUANT TO *MARIJA'S LAW*

A register of criminal records is a database for recording and storing information on criminal records of convicted offenders. It includes information about the perpetrator, committed criminal offenses, imposed criminal sanctions, and possibly some other

information. This information is especially important for the criminal prosecution authorities and possibly for some other authorities as evidence of any prior conviction of the person who is subject to criminal proceedings, but it is equally important to citizens in case such information is necessary for exercising their rights.

In Serbia, when it comes to adult offenders, the matter concerning the content and provision of information from the register of criminal records is regulated by Article 102 of the CC, while the detailed provisions are contained in the *Rules on Criminal Records* of 1979. According to Article 2 of this Regulation, the authority in charge of keeping criminal records is the Department of Internal Affairs. However, “*Marija’s Law*” has established a separate register for recording offenders who fall under the regime of this Act, and this register is kept by the Directorate for Execution of Criminal Sanctions (Art. 14 par. 1 of “*Marija’s Law*”). Therefore, there is a dilemma whether criminal records on sexual offences against minors are kept in two different registers (Ristivojević, 2013: 332). This question gives rise to some concern because the information from the special register of criminal records is permanent and cannot be deleted (Art. 14 par. 3 of “*Marija’s Law*”), whereas Article 97 par. 1 and Article 102 par. 6 of the CC stipulate that the conviction is deleted from criminal records after rehabilitation and information on an expunged conviction may not be disclosed to anyone. Such regulation is based on the belief that anyone who once sexually abused a child is a threat to children safety until his death (Ambrož, 2008: 337). On the other hand, keeping permanent special records excludes the possibility of applying the rehabilitation institute to offenders who committed sex-related crimes against juveniles, which is a disputable issue in criminal policy because it raises the question whether it is justifiable to exclude the application of the rehabilitation institute only in relation to the perpetrators of these criminal offences (Ristivojević, 2013: 334-335). Therefore, some authors relevantly point out that, when regulating the issue of special registers, the legislator has not taken into account the correlation between the special register and the existing criminal register (Miladinović-Stefanović, 2014: 580).

For the purpose of preventing and prosecuting sexual offenses established under the Convention, Article 37 of the Convention provides that the signatory state parties shall take all the necessary legislative or other measures "to collect and store, in accordance with the relevant provisions on the protection of personal data and other appropriate rules and guarantees as prescribed by domestic law, data relating to the identity and to the genetic profile (DNA) of persons convicted committing the offences established in accordance with this Convention." In this context, Article 13 par. 2 of “*Marija’s Law*” stipulates that special records shall include the following specific data: 1) the name of the convicted person; 2) the unique identification number of the convicted person; 3) the address of the convicted person; 4) data on the convicted person’s employment; 5) data important for physical identification of the convicted person and photographs; 6) the DNA profile of the convicted person; 7) data about the committed criminal offence and imposed sanctions; 8) information on the legal consequences of conviction; and 9) information on the implementation of specific measures.

According to Art. 3 of the *Rules on Criminal Records*, most of these data are recorded in the existing criminal register. The novelty in the special register is information important for the physical identification of the convicted person, photographs, and DNA profile. This provision has obviously been inspired by Article 37 of the Convention. However, considering the purpose of the general register of criminal records, such data should not be part of a special register (Ristivojević, 2013: 332). Moreover, the Police Act provides

that the police is required to keep permanent records of persons who have been subjected to identification proceedings, fingerprinting, photographing, and DNA analysis (Art. 76 par. 1 item 7 and Art. 86 par. 1 item 7 of Police Act).

Pursuant to *“Marija’s Law”*, all state and other authorities, legal entities and entrepreneurs are obliged to submit the obtained data (within a period of three days) to the authorized person from the Directorate for the Execution of Criminal Sanctions who is in charge of keeping such records (Art.14). The provisions on handling data from special records are similar to those prescribed in the Serbian Criminal Code. Thus, Article 15 of *“Marija’s Law”* specifies that the information may be given to the competent court, the public prosecutor and the police in relation to pending criminal proceedings against the person entered in the special register, as well as to the competent organizational unit of the police and the Directorate for the Execution of Criminal Sanctions (Probation Service) when it is necessary for performing the activities within their jurisdiction. Upon a reasoned request, the data from special records may be disclosed to a state authority, business entity, other organization or entrepreneur if the time limit of the legal consequences of conviction is still running and if there is a justified interest based on the law. Moreover, the state and other authorities, legal entities, and entrepreneurs working with juveniles are required to seek information about a prospective employee, i.e. whether the person who is to be employed to work with minors has been entered in the special register. In compliance with provisions of Articles 37 par. 1 and par. 3 of the Convention, *“Marija’s Law”* also stipulates that the data in the special register is subject to the legal provisions governing the protection of personal data and confidentiality of information. The data from the special register may be disclosed to foreign state authorities in accordance with a respective international agreement.

7. CONCLUSION

Without disputing the legitimacy of the legislator’s intention to prevent sexual offenses involving pedophilia, it is not difficult to conclude that the legal solutions envisaged in the Act on Special Measures for the Prevention of Crimes against Sexual Freedom involving Minor (*“Marija’s Law”*) does not inspire much confidence. In fact, the legislator seems to have disregarded the principle of legal certainty considering that the general institutes regulated by the Serbian Criminal Code were not duly taken into account. Namely, subject-specific laws that regulate special criminal regimes must abide by the basic postulates of criminal law and criminal policy, and possible departure thereof may be allowed in exceptional cases, only if it is absolutely justified. Therefore, *“Marija’s Law”* should be amended to comply with the Serbian Criminal Code. Bearing in mind that this legislative act was adopted only a few years ago, it is still too early to comprehensively assess its effectiveness, particularly given the fact that it is not supported by some objective circumstances. Namely, the Serbian state authority in charge of the implementation of specific measures is the Probation Services at the the Directorate for the Execution of Criminal Sanctions, which is still a young institution facing numerous challenges. On the other hand, given the importance of the delicate issue which is regulated by this Act, we should not be overcritical towards the provisions of *“Marija’s Law”*. In any case, time will tell whether this Act will meet the projected expectations.

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MOGUĆNOSTI TZV. MARIJINOG ZAKONA U SUZBIJANJU PEDOFILIJE

Seksualni delikti, naročito oni pedofilskog karaktera, izazivaju veliku pažnju kako svekolike stručne, tako i laičke javnosti. Već izvesno vreme u javnom diskursu su prisutni stavovi i zahtevi da se za ove učinioce predvide strožije kazne i druge krivičnopravne mere. Narodna skupština Republike Srbije je 2013. godine donela Zakon o posebnim merama za sprečavanje vršenja krivičnih dela protiv polne slobode prema maloletnim licima, koji se kolokvijalno naziva "Marijin zakon", a dobio ga je po imenu maloletne žrtve krivičnog dela silovanja sa smrtnim ishodom. Ovim je uspostavljen poseban krivičnopravni režim u odnosu na seksualne delinkvente pedofilске orijentacije. Kao osobenosti "Marijinog zakona" mogu se navesti uvođenje posebnih mera i posebne evidencije namenjene učiniocima ovih krivičnih dela. Pored toga ovaj Zakon isključuje i delom modifikuju primenu određenih opštih krivičnopravnih instituta u odnosu na seksualne delinkvente, i to onih koji učiniocima krivičnih dela pružaju odgovarajuće pogodnosti.

Ključne reči: maloletna lica, krivična dela protiv polne slobode, "Marijin zakon".