

Letter to Editors. Upon the bill on prevention of sexual delinquency threats

Dear Editors,

on 16 January 2016, the Marshal of the lower house of the Polish parliament received the bill on preventing sexually-motivated crime threats (together with secondary legislation drafts) presented by the Prime Minister of Poland, Beata Szydło. In relation to the ongoing discussion, first, concerning the regulations proposed in the draft and then – the effects of adopting this act by the Sejm of the Republic of Poland, I would like to make also my voice audible. Voice of a person who has devoted over ten last years to studying the phenomenon of pedophilia, which involved conducting research (with financial support from the Polish National Science Centre), publishing results and offering therapy to sexual crime victims and offenders. The decision to speak up was also influenced by the course of the meeting of the Extraordinary Subcommittee for considering the government's bill on preventing sexually-motivated crime threats (subcommittee of the Sejm Justice and Human Rights Committee), which was attended by my colleague Dr Filip Szumski, assistant professor in the Clinical and Social Sexology Research Group of the Institute of Psychology at the Adam Mickiewicz University in Poznan.

I highly identify with the statement that a legislator's objective should be to ensure a decrease in the number of sexual crimes by coordinating actions undertaken at various stages of preventing perpetration. Legislative efforts should also be integrated with all rules governing the operation of a democratic state, the existing legal solutions, and the current system of social reintegration.

The government's bill on preventing sexually-motivated crime threats (hereinafter referred to as the Act) is not going to give the above mentioned result because the solutions proposed therein are an example of only seemingly effective solutions that will not contribute to lowering the amount of sexual crimes.

The Act provides for three particular protective measures (Article 3 of the Act): 1) sex offenders registry; 2) obligations of employers and other organizations with respect to activities related to upbringing, education, and medical treatment of minors or taking care of them; 3) determining locations particularly endangered with sexually-motivated crime. The measure mentioned as first is of major importance. The other two refer to peculiar methods of using the data on the registry.

Pursuant to Article 4.1 of the Act, the registry consists of two separate databases. The first one is a limited access registry intended to hold data on all offenders, with minor exceptions, indicated in chapter XXV of the Polish Criminal Code. The second registry is a public record which is to hold personal data of persons sentenced under Article 197.3.2 or Article 197.4 of the Polish Criminal Code, or who have committed the crime referred to in Article 2, being previously sentenced to imprisonment without the conditional suspension of the performance of the sentence due to crime referred to in Article 2, if any of these crimes has been committed against a minor.

The locations particularly endangered with sexually-motivated crime are determined in the form of a publicly available police map of sexually-motivated crime threats. In accordance with secondary legislation drafts to the Act, the map of threats includes information about 1) places of crimes committed against sexual freedom and decency, specified in chapter XXV of the Polish Criminal Code within past 24 months; 2) actual places of residence of the offenders entered into the Sex Offenders Registry – limited to indicating the names of the streets, and in the lack thereof – to the names of cities or towns. It means that also a part of personal data of the offenders appearing in the limited access registry will be made publicly available, bringing thus the status of this registry closer to the public one. The effort to create a map of threats shows that maintaining two registries, one of which is supposed to restrict public access to the data, is an illusion. In reality, the information combined with the map of threats allows to identify all offenders.

The specific wording of the methods of meeting the employers' and other entities' obligations also serves the same purpose (increasing access to the limited access registry). Article 20.1 provides that prior to establishing an employment relationship or admitting a person to other activities related to upbringing, education, leisure, and medical treatment of minors or taking care of them, employers or other organizations are obliged to obtain information whether such person's data appears in the limited access Registry. According to the procedure described in the secondary legislation drafts, these entities may access the registry after logging in (upon prior registration) to an IT and telecommunications system and completing a report that includes data enabling identification of the person to which the report applies, and indicate the legal grounds for the report. Based on such inquiry, answer is provided via the same system. The actual ground for the inquiry (e.g. looking for a job related to taking care of minors in the entity that made the inquiry) undergoes no verification, which poses great risk of uncontrolled access to the Registry.

The above solutions, all coming from the secondary legislation drafts, reveal the illusory character of the attempts to protect sensitive data, provided for in the bill. As a matter of fact, both registries turn out public.

It is difficult to escape the impression that the legislator has been intent on making public the personal data and places of residence of the largest possible group of sex offenders. At this point, one should ask about the real goals of such an action: whether increasing the citizens' knowledge about the identity and place of residence of offenders would result in lower occurrence of sexual crime. The results of empirical research conducted in a country experienced in creating public registries of sex

offenders (USA) do not provide comprehensive grounds to justify such assumptions. Even though I have become familiar with the entire explanatory statement of the bill (and secondary legislation), I cannot say that the proposed argumentation considers the proportion of negative side effects of the Act, as compared to the pros of the implementation thereof, and that it offers a profound evaluation of this ratio. Namely, it focuses on beneficial effects of increased involvement of local communities in “safety management” processes. Not mentioning the negative outcomes of consenting to unregulated social control, which take the form of ostracism, discrimination (lynches, persecuting offenders and their families, as well as worsening the situation of victims) or even violence against a particular group of people, does not have to coincide with such measurable effects as a decrease in crime rate. Therefore, another question must be asked: whether increased knowledge of citizens about sex offenders may result in dangerous consequences such as increased crime, both sexual and non-sexual.

The problem concerns not only the sole effectiveness of the proposed solutions, but also the idea of protecting all members of the society against dangers that result from living in a social group. In a democratic country where the separation of powers applies, protection of citizens is an obligation of the state, whereas solutions included in the Act transfer this obligation – although partially, still to an excessive extent – to citizens. This leads to a situation when the protection provided by the country becomes less effective, since members of the society are not able to rely on it fully. The message “take your business in your own hands” is in this particular case a hazardous message, as it leads to unregulated, irrational, and uncontrolled behavior. It becomes a disguised encouragement for discrimination and use of violence against offenders, that is people who indeed violated legal standards, yet have already been punished for their actions.

Those inconsiderate and extreme regulations, which approve (although not directly) of such social method of combating crime, may paradoxically bring opposite effects. This is due to the fact that offenders who are to appear in the registry, in particular those who will appear there for life (offenders specified in Article 106a of the Polish Criminal Code), will be deprived of any chance to reintegrate with the society, which will significantly limit the possibility of their therapy and resocialization. Acting for their own safety, offenders will focus on the past, which is hiding their criminal history, instead of taking a prospective approach (treatment, social reintegration). By doing so, the entire method of systemic prevention of sexual crime, based on coherent preventive, therapeutic, and punitive measures, is going to perish.

Since, as I have underlined at the beginning, my voice in the discourse on methods of preventing sexual crime is a polemical one, rather than an expression of indignation, I shall also conclude with a constructive statement. I deeply support any and all successful efforts aimed at decreasing the number of sexual offences and therefore I join them. And instead of adopting extreme, seemingly effective strategies, I suggest to carefully reconsider the proposals of the government (before the Senate outvotes the Act without any amendments) and supplement them with proven solutions. Let the sole fact that I acknowledge (in line with the standpoint of the Polish Sexological

Society) some provisions included in the proposed Act as proven and worth implementing serve as example that I do not criticize its assumptions completely and I do not reject them without comprehensive analysis of their usefulness. I claim that, for instance, the very existence of entirely non-public sex offenders registries may be a significant element of the sex crime prevention system. In order for such registry to play a vital role within the system, it is necessary to combine it with an organization offering therapy for offenders, probation supervision and post-penitentiary supervision. In such situation, the registry is to serve as an element that facilitates the organization of other forms of social reintegration, leading to the prevention of sexual crime. It means that a registry, which is not related to other above mentioned forms of systemic prevention of sexual crime, will not be effective.

Therefore, I propose a set of solutions that should be integrated with the developed registry in order to increase its effectiveness. They are as follows:

1. Obligatory measurement of the level of sex recidivism with sex offenders:
 - a) The risk should be measured using methods created specially for this purpose and adapted to the Polish reality;
 - b) The procedure of measuring the risk should be performed by an interdisciplinary team composed of specially trained experts.
2. Making the decision on transferring data to the registry and on undertaking other social reintegration measures conditional on the level of sex recidivism.

Offenders displaying a low level of sex recidivism ought to be excluded from the registry and from other social reintegration activities, or the intensity of those activities should be lower. As a result of such solution, offenders who pose inconsiderable risk do not divert attention from offenders who pose significant risk. It also allows to focus the resources intended for the prevention of sex crime on offenders characterized by high risk of recidivism.

3. Post-penitentiary supervision for at least some offenders:
 - a) Post-penitentiary supervision allows to monitor and control whether any factors that may possibly anticipate recidivism are displayed by the offenders, and to what extent;
 - b) The level of sex recidivism risk should serve as a criterion for the potential selection of offenders to be put under supervision;
 - c) The supervision should be ruled for a definite time period and followed by a decision on potential changes to the intensity or termination thereof;
 - d) People holding positions related to post-penitentiary supervision over sexual offenders should partake in a specialist training related to the monitoring of sex recidivism risk, and should be obliged to update their knowledge systematically by participating in subject-related trainings.
4. Covering at least some offenders with a therapy continued also after leaving the correction facility, which is aimed at preventing sex recidivism:
 - a) The therapy of sexual offenders significantly decreases the risk of sex recidivism. Therapy held on an outpatient basis is more successful than therapy held in custody;

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- b) The potential selection of offenders obliged to undergo a therapy should be dependent upon the level of recidivism risk;
 - c) The therapy should be conducted solely by specially trained experts who are obliged to update their knowledge systematically.
5. Introduction of obligatory and regular evaluation of the effectiveness of social reintegration measures applied to sexual offenders:
- a) Evaluation should be performed by an interdisciplinary team, consisting of, among other people, specialists in sexual offenders' issues, and public policy evaluation;
 - b) Evaluation should focus primarily on ratios related to the general level of sexual crime and sexual crimes committed on a recurring basis (recidivism).

While taking the floor in the discussion on preventing sexual crime, I am aware how easy it is to disavow it by distorting its content and the intentions within, treating it as a voice in defense of offenders, against the interests of victims and against the general social interests. In order to avoid similar misunderstandings, I have presented my intention – striving for lowering sexual crime rate – very clearly and right at the beginning.

In hopes of a response, yours sincerely

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