

YES OR NO TO SEX OFFENDER REGISTRIES? LESSONS FOR BOSNIA AND HERZEGOVINA

Ena Kazić*

Abstract: *The establishment of sex offender registries is the standardized approach in modern criminal legislation to prevent recidivism of sex offenders. Even though they still have not been introduced in some countries, as a whole, they are not a new approach in criminal law. However, for the states that have introduced sex registries, there are reasonable questions: have sex offender registries accomplished their aim in these states and is their establishment the correct approach – having in mind that they can bring about an interesting dichotomy. After being punished, sex offenders should be reintegrated into society, whereas, the registries themselves can pull an individual into the criminal zone again, as they are not able to be socially integrated. The aim of this article is to question these issues, to analyze them, and to present lessons that can be learned for Bosnia and Herzegovina, a state that in recent years began a discussion of whether to introduce sex offender registries. Unfortunately due to Bosnia and Herzegovina's specific internal state organization, division of legal jurisdictions, and a general lack of understanding for this tool, it is dealing with an unbalanced establishment and a lack of legal regulations for sex offender registries.*

Keywords: *Sex Offender, Pedophile, Registry, Criminal Law*

1. INTRODUCTION

The most cited definition of *sexual violence* is the one given by World Health Organization, in the *Report* from 2002, which defines sexual violence as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic or otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.”¹ It is not specifically a legal term, but rather it is one general term consuming various types of criminal offenses. Since criminal law is dominantly national law, according to the principle of legality, it varies from state to state which actions will be prescribed as types of sexual violence. However, no matter which type it is, sexual violence² leaves lifelong consequences to the victim. It violates the most precious and important values of humankind such as human dignity, morality, sexuality, freedom of choice. It causes physical, psychological, and social consequences to its victims³ and once perpetrated, its

* Dr. sci. Ena Kazić, Assistant Professor at Faculty of Law, International University of Sarajevo, Sarajevo, Bosnia and Herzegovina

¹ Understanding and addressing violence against women In: *World Health* [online]. 2012 [2020-03-12]. Available at: <https://apps.who.int/iris/bitstream/handle/10665/77434/WHO_RHR_12.37_eng.pdf;jsessionid=4A74EA2FF83EC70565EFD729882CD167?sequence=1>.

² However this inequality of legal regulation is being decreased due to international conventions that suggest which actions to be prescribed as criminal offenses. Types of Sexual Violence. In: *RAINN* [online]. [2021-07-07]. Available at: <<https://www.rainn.org/types-sexual-violence>>.

³ Effects of Sexual violence. In: *RAINN* [online]. [2021-07-07]. Available at: <<https://www.rainn.org/effects-sexual-violence>>; JINA, R., THOMAS, L. S. Health consequences of sexual violence against women. *Best Practice & Research Clinical Obstetrics & Gynaecology*. 2013, Vol. 27, No. 1, [2021-07-28]. Available at: <<https://www.sciencedirect.com/science/article/pii/S1521693412001344>>.

effects remain and even further erode those values and the possibility of conducting a normal life.

The latest statistics on sexual violence show that “in the U.S. 36.3% of women had experienced contact sexual violence...,”⁴ while “E.U. member states revealed that 11% of women had been a victim of sexual violence at least once after age 15...”⁵ and that “... around 3.7 million women had been the victim of sexual violence in the E.U..”⁶ Having all these facts in mind, it is obvious that there is an important task in front of all states: to find an effective way of preventing this type of criminality. Criminal law aims “to protect basic individual and collective social values which can be destroyed or violated by perpetration of criminal offence.”⁷ One mechanism to protect society is to prevent⁸ the criminal offence from being perpetrated in the first place. Prevention of crime falls into special and general prevention. *Special prevention* of crime is preventing the perpetrator of committing new crime again, by punishing that person, by physically disabling that person of committing the crime and in that way giving the lesson that committing crime is never acceptable. *General prevention* is system of deterrence, where by punishing the perpetrator, the wider message for the population is being sent in a sense that they would be in the same position if they perpetrate criminal offence. The methods and mechanisms to achieve this goal have changed within criminal law thought over the centuries of its existence.⁹ Even though the approach of punishing the perpetrator no matter what the cause of the perpetration was dominant for centuries, the Neo-classic science of criminal law, put forth the an alternate idea that punishment as such is not enough for prevention of crime. The Neoclassic approach theorized that the source of the criminal offence might still exist regardless of punishment served. It can exist within the offender (addictions, psychological or general health conditions) or its environment.¹⁰ If *ethio* exists, then it should be taken away from the perpetrator. Therefore, the Neoclassic approach to criminal law accepted the pluralism of legal sanctions and nowadays criminal law includes other types of sentences (security measures, probation, etc.), not just relying on punishment alone.

When it comes to sex offences, there is a quite logical question: is the sanction enough or should the perpetrator be observed even after serving his/her debt to the society? The latter is acceptable from the standpoint of: the source of this type of crime lays in biological and psychological factors (hormones, psychological triggers) that continue to exist even after the punishment has been served. The establishment of sex offender registries is

⁴ Prevalence of Sexual Assault. In: *The Advocates for human rights* [online]. June 2019 [2020-02-01]. Available at: <http://www.stopvaw.org/prevalence_of_sexual_assault>.

⁵ Ibid.

⁶ Ibid.

⁷ TOMIĆ, Z. *Krivično pravo I (Criminal Law I)*. Sarajevo: Pravni fakultet Univerziteta u Sarajevu, 2008, pp.109–110.

⁸ Ibid. pp. 109–110.

⁹ LUKOVIĆ, M., PETROVIĆ, V. Modeli tretmana seksualnih prestupnika (Models of sex offenders treatment). *Specijalna edukacija i rehabilitacija*. 2017, Vol. 16, No. 3, p. 338.

¹⁰ Sources of crime are well explained in ADLER, F., MUELLER, G., LAUFER, W. *Criminology*. USA: McGraw Hill, 1991, pp. 119–120.

a means to address this concern, since they are believed to be the best solution for the prevention of this type of crime. Lukovic and Petrovic correctly noticed that treatment of sexual offenders is “any form of intervention with the aim of prevention or decreasing risk of recidivism” and one of them are sex offender registries.¹¹ Sex offender registries are “a system used by countries around the world in order for government and law enforcement authorities to track individuals convicted of sex-related crimes.”¹² Sex offender registries consist of personal data about sex offenders entered into a registry and, in some countries, ex-sex convicts are required to periodically report their residence data to the relevant institution. They truly do fit into a general idea of *criminal law deterrence*¹³ as a mechanism of *criminal prevention*.

The prevention through deterrence approach can be achieved on two levels: special and general. Criminal sanctions deter an individual from the perpetration of a criminal offence and, additionally, a sex registry can prevent the crime. On one hand, the registry sends a message that a life of self-reporting and constant state monitoring does not pay off and, on the other hand, a potential recidivist is physically prevented from perpetrating a new criminal offence since he/she is not able to work with, or, in some cases, even live near potential victims (especially children). In the context of the latter, the possibility and opportunity of committing a new criminal offence, and thus the *ethio criminalis*, is taken away from the perpetrator.

In this paper, after a short overview of the general reaction to sexual violence, the importance of sex offender registries will be discussed. Keeping in mind that decades have passed since the establishment of the first sex offender registries, I will examine whether the main purpose of their establishment has been accomplished or whether they have adverse effects on the perpetrator and on society as a whole. Special emphasis will be given to the legal system of Bosnia and Herzegovina and its approach regarding sex offender registries. Having all this in mind, this paper is divided into six parts: introduction, pros and cons of sex offender registries, brief remarks on international legal sources for establishment of sex offender registries, examples of selected sex offender registry legislation, the establishment of sex offender registries for Bosnia and Herzegovina, and the conclusion.

2. PROS AND CONS OF SEX OFFENDER REGISTRIES

The discourse on whether to establish sex offender registries or not mirrors the discourse on keeping a balance between *human rights* and *the need to keep a close eye on the offender*. It is quite understandable that the objective of establishing a sex offender registry

¹¹ Others may be physiotherapy, neurosurgeon methods, physical castration, pharmacological interventions, cognitive-behavioral approach, etc. LUKOVIĆ, M., PETROVIĆ, V. *Modeli tretmana seksualnih prestupnika (Models of sex offenders treatment)*. p. 338.

¹² Sex Offender Registry In: *Legal Dictionary* [online]. 16. 8. 2015 [2021-07-07]. Available at: <<https://legaldictionary.net/sex-offender-registry/>>.

¹³ VESS, J. et al. International sex offender registration laws: Research and evaluation issues based on a review of current scientific literature. *Police Practice and Research*. 2011, Vol. 15, No. 4, pp. 1–5.

is to prevent crime. Aside of the concept of prevention, Logan¹⁴ questions if their establishment is being triggered by “skepticism and pessimism of certain offenders to pursue lawful lives.”¹⁵ It is what he calls *actuarial justice*. That question has a significant place in this discussion, since it is reasonable to wonder if the establishment of sex offender registries is an informal recognition that punishment together with other sanctions (including security measures) is not enough to prevent the crime. The lack of certainty that the sanction will prevent the crime, brought us to the factual state of the establishment of sex registries.

2.1 Arguments in favor of sex offender registries

Consequently, one of the most important reasons in favor of the establishment of sex offender registries is the *prevention* of crime, even after the punishment has being executed against the convict. Condon indirectly admits the point of actuarial justice, stating that there is an understanding that the regular treatment does not work in the prevention of crime and adds that there is a strong belief that nearly all sex offenders reoffend.¹⁶ Therefore it can be said that the main arguments for the establishment of sex offender registries are linked one to another: the idea of a high possibility of recidivism and, consequently, the establishment of registers in order to prevent that recidivism. According to Letourneau, “registration and notification policies were predicated, in part, on the belief that sexual offenders are at exceptionally high risk of sexual recidivism and require substantial surveillance to reduce that risk.”¹⁷ The deterrence effect can be increased when one is in fear of not only legal, but also, social consequences.

Expectations of the preventive role and the practical use of registries in the supervision of an offender and in the assessment of sex offenders based on data provided in the registry has been expressed in paragraph 5 of *Resolution 1733/10 of European Parliament on Reinforcing Measures Against Sex Offenders*. Based on the aforementioned *Resolution 1733/10*, “the information in the register may be used to assess the risk that the offender poses to the community and therefore to manage that risk. If a large amount of relevant and up-to-date information is stored on the register, it can play a key role in rapidly detecting perpetrators of offences...”¹⁸

The answer to the question, *would you like to know if a sex offender is near you*, Condon¹⁹ mentions as an additional argument in favor to establishment of sex offender registries. The awareness of a threat being near allows individuals to better protect themselves by deciding what to do, whether to move or to stay, whether to keenly observe the ex-con-

¹⁴ LOGAN, W. A Study in “Actuarial Justice”: Sex Offender Classification Practice and Procedure. *Buffalo Criminal Law Review*. 2000, Vol. 3, No. 2, p. 595.

¹⁵ *Ibid.*, p. 595.

¹⁶ CONDON, T. Sex Offender registry: More harm than good? In: *The CT Mirror* [online]. 21. 5. 2018. [2020-01-12]. Available at: <<https://ctmirror.org/2018/05/21/sex-offender-registry-harm-good/>>.

¹⁷ LETOURNEAU, E. et al. Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence against Women. In: *ojp.gov* [online]. September 2010 [2019-12-12]. Available at: <<https://www.ojp.gov/pdffiles1/nij/grants/231989.pdf>>.

¹⁸ Paragraph 5, *Resolution 1733/10 Of European Parliament On Reinforcing Measures Against Sex Offenders*.

¹⁹ CONDON, T. *Sex Offender registry: More harm than good?*

vict, or whether to allow their children to be near that person. That was one of the major reasons why the concept of sex offender registries was well received in many countries, especially in the USA. Not to mention the statement of Megan Kanka's (a child from California, who was murdered by her neighbor, a convicted sex offender) parents that if they had known that a sex offender with two previous convictions was living just across the street, that their daughter would be still alive.²⁰ The knowledge about a threat, may provide piece of mind and increase ones feeling of safety. Doob and Gartner think that "registries and notification systems give parents an opportunity to protect their children,"²¹ by taking away the opportunity from the perpetrator to commit the criminal offence.

2.2 Arguments against sex offender registries

Decades have passed since the establishment of sex offender registries in some countries which makes it natural to question whether the state should rethink the establishment of sex offender registries in their current form. Based on the available scholastic and practical data, it is visible that the reasons against sex offender registries are all related to the offenders' human rights and are determined by their nature, which are divided into personal reasons, social reasons, and economic reasons.

An individual who falls into the registration and notification scheme, enters all of his/her personal data (including DNA samples) into the database, that is ran and kept by a certain institution. Some states even have specialized web sites where the personal data of convicted pedophiles is publicly available. Many argue that this requirement results in the perpetrator feeling that he/she is labeled for life, even though they have paid their debt to the society by fulfilling their sentence.²² Together with the feeling of being labeled for life, an individual feels shame and embarrassment knowing that everybody knows their past.²³ The byproduct of these situations can trigger serious emotional disorders, such as depression, lack of self-confidence, and lack of self-respect.²⁴ All of them have influence on the quality of life of that individual, who lacks privacy. Some authors such are Letourneau,²⁵ Farkas,²⁶ Doob and Gartner²⁷ mention the breaking of family ties, as an often-unforeseen consequence. Based on the aforementioned reasoning, fundamental human rights such as the right to privacy and family life are being challenged.

²⁰ In the USA, after the tragic event, due to activism of Megan's parents, Megan's Law was brought about, bringing important changes into legal regulation of sex offender registries. In: *California Megan's Law Website* [online]. [2021-07-07]. Available at: <www.meganslaw.ca.gov>.

²¹ DOOB, A., GARTNER, R. Some Recent Research on Sex Offenders and Society's Responses to Them. *Criminological highlights*. 2013, Vol. 5, No. 1, p. 13.

²² See also: SCHULTZ, C. The Stigmatization of Individuals Convicted of Sex Offenses: Labeling Theory and The Sex Offense Registry. *Themis: Research Journal of Justice Studies*. 2014, Vol. 2, p. 72.

²³ In that sense: FARKAS, M., MILLER, G. Challenges Faced by the Families of Convicted Sex offenders. *Federal Sentencing Reporter*. 2007, Vol. 20, No. 2, p. 89.

²⁴ In that sense: LETOURNEAU, E. J. et al. *Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence against Women*. p. 9.

²⁵ *Ibid.*, p. 9.

²⁶ FARKAS, M., MILLER, G. *Challenges Faced by the Families of Convicted Sex offenders*. pp. 88–92.

²⁷ DOOB, A., GARTNER, R. *Some Recent Research on Sex Offenders and Society's Responses to Them*. p. 13.

Even though the feeling of being *labeled* is a personal sensation, substantively it is a perception related to society, so it can be understood as a *social* consequence of the sex offender registries and many cite it as the first of the *cons* to their establishment. While being labeled as a sex offender, there is less probability that these “modern lepers”²⁸ can reintegrate into society. This problem has been identified and discussed within the labeling theory in Criminology, which originated in the “post-World War I work of Charles Horton Cooley, William I. Thomas and George Herbert Mead,”²⁹ and was shaped by the sociologist Edwin Lemer, who created the basic assumptions to this theory. This theory declares that “the reaction of other people and the subsequent effects of those reactions create deviance.”³⁰ It recognizes labels as causes of criminal behavior³¹ since an individual perceives himself or herself as others perceive them. If others perceive an individual as criminal, then that is how that person will behave. In correlation with this theory, it is then understandable to question if the labeling sensation, after being entered into sex offender registry, will bring the individual back to the criminal zone? If we put subjectivity aside, then we can focus on the objective part of this story. Since an ex-convict will be in the database, finding a job for him or her will be challenging. Without the possibility to earn a living for themselves legally, that individual is pushed in the criminal zone as the only way to survive. Reintegration and re-socialization will be consequently challenged. This reasoning confirms why, together with labeling as a source of recidivism, employment issues and economic hardship are two very important reasons that many scholars list as reasons against the establishment of sex offender registries.³² Condon adds that even if they manage to find job, those jobs are usually underpaid and are not sufficient to sustain a decent life.³³

Labeling an individual results not only in psychological, but also *physical consequences*. Letourneau mentions threats and harassment as possible consequences of labeling individuals as a result of sex offender registries.³⁴ Some individuals decide to give a *message* to ex-convicts that they lack social acceptance in the community through the use of threats, physical attacks, and bullying. Not only is the ex-convicts security being threatened while decreasing their possibility of having a normal quality of life, but it is also triggering criminal behavior of others in society. However, this theory is challenged by Doob and Gartner,³⁵ who state that the harassment of identified sex offenders in the community is relatively low (3.5%).

²⁸ Term used by CONDON, T. *Sex Offender registry: More harm than good?*, with the meaning that sex offender registries make them to be known to everyone they were in conflict with law and make them to be stigmatized as such.

²⁹ ADLER, F. et al. *Criminology*. USA: McGraw Hill, 1991, p. 179.

³⁰ *Ibid.*, 179.

³¹ *Ibid.*, 179.

³² See: *Ibid.*, 89 and LETOURNAEAU, E. et al. *Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence against Women*. p. 9.

³³ CONDON, T. *Sex Offender registry: More harm than good?*

³⁴ LETOURNAEAU, E. et al. *Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence against Women*. p. 9.

³⁵ DOOB, A., GARTNER, R. *Some Recent Research on Sex Offenders and Society's Responses to Them*. p. 13.

Vess et al,³⁶ Farkas and Miller,³⁷ add *isolation* to the other social consequences of a sex offender registry. They define *isolation* as a logical consequence of the emotional state of mind of the individual. However, that sensation is not only a subjective feeling. Some states prohibit ex-pedophiles from living near schools, nurseries and parks, which causes them to move far from their relatives and friends, making them even more isolated from their natural surroundings. This consequence additionally confirms the above mentioned theory of breaking up of family and friend ties. Schultz analyses the problem of housing and isolation and states that the problem with this concept is that ex-offenders are not the ones who you can find in parks and schools, but instead, scientific data shows that 87% of victims are being victimized by their relatives.³⁸ So, based on that fact, the postulate of isolation and prohibition of living near certain places seems to be questionable. In addition to that, according to Doob and Gartner,³⁹ “conditions that are placed on sex offenders prohibiting them from living near schools and day-cares do not contribute to public safety.”⁴⁰ Teichman confirms their opinion by saying that registries do not improve public safety, but harm those individuals⁴¹ and adds that they “condemn offenders to a life of stigma with no possibility of gaining new social capacity.”⁴² Some authors such as Doob and Gartner⁴³ mention the *financial dimension* of having and operating the sex offender registries, stating that it is not cheap, because their establishment and management bring expenses to states.

In recent years many scholars have managed to question the presumption of recidivism, whose prevention has been the main argument in favor of the establishment of sex offender registries, for years. Some research shows that not all sex offenders tend to re-enter the criminal zone. Therefore, Evans notes that “recidivism rates are much lower for sex offenders than for the general criminal population.”⁴⁴ She also thinks that “all available data indicated that registration and notification have had little or no effect in preventing sexual abuse, reducing sex offence recidivism or protecting children.”⁴⁵ Letourneau cites the research of *Schram and Milloy*, that shows no significant difference in the rates of recidivism for the notification and non-notification groups.⁴⁶ Similar results were given in the research of Washington State Institute of Public Policy,⁴⁷ that was conducted in 2005.

³⁶ VESS, J. et al. *International sex offender registration laws: Research and evaluation issues based on a review of current scientific literature*.

³⁷ FARKAS, M., MILLER, G. *Challenges Faced by the Families of Convicted Sex offenders*. pp. 88–92.

³⁸ SCHULTZ, C. *The Stigmatization of Individuals Convicted of Sex Offenses: Labeling Theory and The Sex Offense Registry*. p. 71.

³⁹ DOOB, A., GARTNER, R. *Some Recent Research on Sex Offenders and Society's Responses to Them*. p. 2.

⁴⁰ *Ibid.*, p. 2.

⁴¹ TEICHMAN, D. Sex, Shame, and the Law: An Economic Perspective on Megan's Law. *Law & Economics Working Papers*. 2004, pp. 2–63.

⁴² *Ibid.*, p. 56.

⁴³ DOOB, A., GARTNER, R. *Some Recent Research on Sex Offenders and Society's Responses to Them*. p. 13.

⁴⁴ BARON-EVANS, A. American Criminal Justice Policy in a “Change” Election USA. *Federal Sentencing Reporter*. 2008, Vol. 20, No. 5, pp. 358–359.

⁴⁵ *Ibid.*, p. 358.

⁴⁶ LETOURNEAU, E. et al. *Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence against Women*. p. 12.

⁴⁷ *Ibid.*, p. 13.

It examined recidivism of sex offences in three periods and showed that “sex offenders general recidivism rates remained statistically unchanged over the time.”⁴⁸ In addition to that, according to Doob and Gartner, “most sex offenders placed in probation do not re-offend.”⁴⁹

Finally, it is crucial to wonder if the existence of sex offender registries might harm rights and privacy of victims. It is well known that sex offenses are part of dark number of crime because victim hesitate and decide not to report the criminal offense, for being afraid of the perpetrator, or is in a close relations with him/her, or because they feel ashamed and are afraid that bringing the case in front of justice will put emphasis on them, label them as victims and discover details of their privacy. Upon the completion of the case, it is possible to imagine that potential data from the registry (depending of state and inputs in the system) about the victim might leak, or moreover, when it comes to cases of close relation between perpetrator and victim, understanding the identity of victim through the information about perpetrator from the sex offenders registry would harm victims and bring them to potential secondary victimization.

3. FEW REMARKS ON INTERNATIONAL LEGAL SOURCES FOR ESTABLISHMENT OF SEX OFFENDER REGISTRIES

After the reasons in favor of the establishment of sex offender registries have been recognized, many states introduced them into their national legislation. The most relevant regional documents are *Resolution 1733/10 of European Parliament on Reinforcing Measures Against Sex Offenders*, *Directive 2011/92/EU on Combating Sexual Abuse of Children and Child Exploitation and Child Pornography* and the *Convention of Council of Europe on the Protection of Children from Sexual Exploitation and Sexual Abuse*. In respect to one of the most important arguments against of the establishment of sex offender registries, the violation of human rights, there will be a short overview of the opinion of the European Court for Human Rights in the case, *Gardel vs. France*.

*Resolution 1733/10 of European Parliament on Reinforcing Measures Against Sex Offenders*⁵⁰ is a document of high importance when it comes to the establishment of sex offender registries, due to its purpose and the establishment of international cooperation in the sharing of data for the effective prevention of future sex offenses. Paragraph 4 of the resolution defines sex offender registries as, “an instrument used in a procedure whereby convicted sex offenders are required to notify the relevant authority of personal information, such as their name, address and date of birth, and to immediately inform this authority if their personal circumstances change. The record of these notifications is commonly referred to as a sex offender register. For such registers to be effective, all information stored must be accurate and regularly updated.” The assembly, in the paragraph 10 expressed concern of the fact that sex offenders travel abroad and therefore there

⁴⁸ Ibid., p. 14.

⁴⁹ DOOB, A., GARTNER, R. *Some Recent Research on Sex Offenders and Society's Responses to Them*. p. 13.

⁵⁰ Reinforcing measures against sex offenders. In: *Council of Europe – Parliamentary Assembly* [online]. 27. 5. 2010 [2021-07-07]. Available at: <<https://pace.coe.int/en/files/178668>>.

is an obvious need for the establishment of international cooperation in the notification and registration matters. It is stated that on an international level there is a greater need for enhanced effectiveness and coherence to be achieved. Therefore, the final paragraph (17) advocates to “increase the quality, quantity and regularity of the information they share with other member states on sex offenders in order to effectively oversee the movements of offenders.” This paragraph sought to improve the information exchange in order to prevent sex offenders from getting a job related to children abroad and to improve the quality and quantity of data sent to Interpol. However, the assembly did not support the idea of the establishment of a Europe-wide sex offender register, but instead, called states to make changes in their national legislation and to consider the establishment of national sex offender registries coupled with the establishment of a system of confidentiality (paragraphs 16.1, 16.5.).

Directive 2011/92/EU on Combating Sexual Abuse of Children and Child Exploitation and Child Pornography supports the establishment of sex offender registries with restrictions related to constitutional human rights and the applicable data protection standards, such as, limited accessibility by the judicial and/or law enforcement authorities.⁵¹

Convention of Council of Europe on the Protection of Children from Sexual Exploitation and Sexual Abuse,⁵² chapter VIII, article 37 prescribes the obligation of state members to adopt legal or other measures for the collection and preservation of data related to the identity and genetic profiles of people convicted of criminal offences described by this Convention. However, the collection and preservation should be made in accordance with the rules for the protection of personal identification and other rules and/or guarantees that are prescribed by the applicable national laws.

European Convention on Human Rights, article 8, titled, “The Right to Respect Private and Family Life” clearly stipulates the rights for every individual in regards to their private life, family life, home life, and correspondence. The obligation of periodical notifications to the police office coupled with the fact that public registries make the criminal history of the convicted accessible to the public, it is understandable why both theoreticians and practitioners are uncertain as to whether registry systems violate a basic human right, the right of privacy. In addition, as mentioned above, there is always a fear for the private and family life of victim as well. *Gardel vs. France*, a case from the European Court of Human Rights, provides valuable insight in respect to this matter.

Applicants in this case were convicted of the criminal offence of “rape of a fifteen (15) year-old minor by a person in a position of authority.”⁵³ In this case, the perpetrators complained that their data was being retroactively included into a national judicial database of sex offenders (claimed for the violation of the article 7 of ECHR) and for a violation

⁵¹ Recital 43. Directive 2011/92/EU on Combating Sexual Abuse of Children and Child Exploitation and Child Pornography. In: *Official Journal of the European Union* [online]. 17. 12. 2011 [2020-02-21]. Available at: <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF>>.

⁵² Convention of Council of Europe on the Protection of Children from Sexual Exploitation and Sexual Abuse. Adopted by Council of Ministers on July 12, 2007. In: *Council of Europe* [online]. 25. 10. 2007 [2021-07-07]. Available at: <<https://rm.coe.int/1680084822>>.

⁵³ Case *Gardel vs. France*, B. B. v. France (application no 5335/06), *Gardel v. France* (no 16428/05) M.B. v. France (no 22115/06), judgment 97 2/09.

of the right to privacy (article 8. of ECHR). However, the Court unanimously excluded the violation of the article 8, stating that when it comes to the entry of data into a national judicial database of sex offenders, the balance between the right to privacy and public interest has been accomplished. In its decision, the Court emphasized the preventive function of the database and the fact that all the data retrieved into the database are kept confidential and that the data might be retrieved by the courts, the police, and the administrative authorities, who will keep it restricted and confidential. The verdict in *Gardel vs. France* and its reasoning leaves little room for a claim of a violation of the right to privacy in all sex registry-related cases in Europe. A similar approach has been adopted by the courts in the USA, according to Hynes, who states that it is established that the priority of public safety prevails over the sex offender's privacy rights.

4. EXAMPLES OF LEGISLATION REGARDING SEX OFFENDER REGISTRIES

The comparative analysis of the existence of special regulations and provisions on sex offender registries triggers several questions. One of them is whether a country has sex registries at all⁵⁴ or if they do, does the sexual offenders data fall under the general provisions regarding the legal consequences of punishment, so that their data remains in a general registry of convicted people and after a certain period of time it is erased. Another question is if the sex offender registries that exist in some countries contain data on all sex offenders (and all sex offenses) or they have sex offense registries only for offenses in which juveniles or children are victims. Finally, the important question related to the states with established sex offender registries is, if the requirement of entering the data is obligatorily *pro futuro*, only for convictions after the registries are established, or they have a *retroactive* effect, so they cover all convicted sex offenders. Some countries have several decades of experience in the application of sex offender registries, while for many other countries, the establishment of a sex offender registries is relatively recent or it is still an ongoing process.

The United States of America is the pioneer in the establishment of sex offender registries. *Jacob Wetterling Crimes Against Children and Sexually Violent Registry Act*⁵⁵ in 1994 initiated the sex offender registry story in the USA.⁵⁶ This act set the minimum standards for state sex registries that would keep the data for 10 years or, in some cases, for life. According to Logan,⁵⁷ the registries data included the offender's name, address, fingerprints

⁵⁴ States with registry systems: Argentina, Australia, Bahamas, Canada, Chile, Cyprus, France, Germany, India, the Republic of Ireland, Jamaica, Kenya, Maldives, Malta, New Zealand, Nigeria, Portugal, South Africa, South Korea, Spain, Taiwan, Trinidad and Tobago, UK and Commonwealth Nations, USA. See: SMART Summary, Global Survey. In: *National Criminal Justice Reference Service* [online]. April 2020 [2021-07-07]. Available at: <<https://www.ojp.gov/pdffiles1/nij/grants/254680.pdf>>. pp. 1-17.

⁵⁵ It is enacted as part of larger violent crime bill, the Federal Violent Crime Control and Law Enforcement Act of 1994. This Act was called after a boy Jacob Wetterling, that has been abducted, assaulted, killed and buried in 1989, in Paynesville, USA, by Danny Heinrich. This case went unsolved for 27 years, until 2016.

⁵⁶ LOGAN, W. A. A Study in "Actuarial Justice": Sex Offender Classification Practice and Procedure. *Buffalo Criminal Law Review*. 2000, Vol. 3, No. 2, p. 599.

⁵⁷ *Ibid.*, p. 599.

and photo and was publicly accessible in order to protect the general public. This act was amended by the *Pam Lyncher Act*⁵⁸ (1996) that allowed federal and state agencies to notify one another when a mandated sex offender moved to another state. Logan states⁵⁹ that this act increased the requirements for registries setting the grounds for lifetime registration of recidivists and aggravated sex offenses. The Pam Lyncher Act “requires persons who have been convicted of a criminal offense against a minor or of a sexually violent offense, or who have been deemed a “sexually violent predator,” to register their residence and fingerprints with the FBI or local authorities.”⁶⁰ The next groundbreaking step in the evolution of sex offender registries was *Megan’s Law*.⁶¹ This law amended the previous law in California and made public notification obligatory for specified registered sex offenders.⁶² This led to the disclosure of personal data of ex-convicts in order to protect public safety. From that time on, through amendments of existing legislation and new specific acts, high standards related to sex offender registries have been set. In that vein, the *Campus Sex Crime Prevention Act* obliges an individual registered in the sex offender registry to notify institutions of higher education in order to prevent them from working with juveniles.

On the federal level, the title I of the *Adam Walsh Children Protection and Safety Act* (2006), titled the *Sex Offenders Registration and Notification Act*⁶³ (hereinafter “SORNA”), set the minimum standards for registration and notification of that type of offender. In the decade since the application of sex offender registries codes passed, loop holes have appeared in practice, therefore, this act eliminated the shortcomings and it improved the legal regulations of sex offender registries.⁶⁴ SORNA “extends the jurisdictions in which registration is required beyond the 50 states, the District of Columbia, and the principal U.S. territories, to include also federally recognized Indian tribes; incorporates a more comprehensive group of sex offenders and sex offenses for which registration is required; requires registered sex offenders to register and keep their registration current in each jurisdiction in which they reside, work, or go to school; requires sex offenders to provide more extensive registration information; requires sex offenders to make periodic in-person appearances to verify and update their registration information; expands the amount of information available to the public regarding registered sex offenders and makes

⁵⁸ Pam Lyncher Sexual Offender Tracking and Identification Act, Public Law 104-236.

⁵⁹ LOGAN, W. A. *A Study in “Actuarial Justice”: Sex Offender Classification Practice and Procedure*. p. 600.

⁶⁰ International Labour Organization. In: *International Labour Organization* [online]. [2020-02-26]. Available at: <www.ilo.org>.

⁶¹ It is set upon the initiative of family Kanka, parents of raped and killed seven year old girl Meghan Kanka. The crime was perpetrated by their neighbor, who was previously convicted for child molestation. They were not aware of that fact and they thought their child would be alive if they knew it. California Megan’s Law Website. In: *California Megan’s Law Website* [online]. [2020-02-03]. Available at: <www.meganslaw.ca.gov>.

⁶² California Megan’s Law Website. In: *California Megan’s Law Website* [online]. [2021-07-07]. Available at: <www.meganslaw.ca.gov>.

⁶³ 34 U.S. Code Part A— Sex Offender Registration and Notification. In: *Cornell Law School – Legal Information Institute* [online]. [2021-07-07]. Available at: <<https://www.law.cornell.edu/uscode/text/34/subtitle-II/chapter-209/subchapter-1/part-A>>.

⁶⁴ Other important acts are: Keeping the Net Devoid from Predators (2008), Military Sex Offender Reporting Act (2015), International Megan’s Law (2016).

changes in the required minimum duration of registration for sex offenders.”⁶⁵ Teichman⁶⁶ notes that every state within the USA has enacted some form of SORNA. Evans states that SORNA acts retroactively to all past cases, including cases not yet finalized.⁶⁷

When it comes to the question of the selection of the individuals entered into the registry system, the concept is based on a *tier system*. There are three tier levels⁶⁸ and Evans⁶⁹ notes that the tier levels are based on the offence, not on the individual’s dexterousness or risk. Tier 1 consists of offenses of less gravity, Tier 2 consists of offenses that are punishable by imprisonment for more than one year and includes most felonious sex abuse or sex exploitation involving minor children. Finally, Tier 3 groups covers offenses that are punishable by imprisonment for more than one year.⁷⁰ However, Evans criticizes the Tier system, suggesting a *risk assessment* as a better solution.⁷¹

Nevertheless, the Tier system determines the duration of time that sex offenders must remain in the registry. Data is being kept for life in Tier 3, 25 years in Tier 2, and 15 years in Tier 1.⁷² The system consists of following data of the individual: name, aliases, internet identification-e mail, telephone number, social security number, address of residence, immigrant documents, data of birth, driver license number, professional license, current photo, finger and palm prints, vehicle information, physical description, criminal history, DNA sample, citation of criminal offence.

It is worthy to mention the Dru Sjodin national sex offender public website,⁷³ which provides information on sex offenders regardless of state and territory, though a simple query.

The United Kingdom’s initial Sex Offenders Act⁷⁴ came into effect in 1997, according to which, all sex offenders are obliged to provide certain information to the registry and to inform the police office in the event of a change of their residence.⁷⁵ *Sarah’s Law* enables an individual to acquire information from their local police of any reported sex offender.

When it comes to **Croatia**, the *Law on Legal Consequences of Sentences, Penalty Records and Rehabilitation*,⁷⁶ within the general provisions of the penalty records stipulated in article 4, paragraph 3, contains the provisions regarding the list of convicted perpetrators

⁶⁵ SORNA. In: *smart.ojp.gov/sorna U.S. Department of Justice – Office of Justice Programs – Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking* [online]. [2020-02-03]. Available at: <<https://www.smart.gov/sorna.htm>>.

⁶⁶ TEICHMAN, D. *Sex, Shame, and the Law: An Economic Perspective on Megan’s Law*. pp. 2–63.

⁶⁷ In that sense: BARON-EVANS, A. *American Criminal Justice Policy in a “Change” Election*. p. 357.

⁶⁸ Juvenile Sex Offender Registry (SORNA). In: *Juvenile Law Center* [online]. [2021-07-07]. Available at: <<https://jlc.org/issues/juvenile-sex-offender-registry-sorna>>.

⁶⁹ BARON-EVANS, A. *American Criminal Justice Policy in a “Change” Election*. p. 357.

⁷⁰ *Juvenile Sex Offender Registry (SORNA)*.

⁷¹ BARON-EVANS, A. *American Criminal Justice Policy in a “Change” Election*. p. 357.

⁷² *Juvenile Sex Offender Registry (SORNA)*.

⁷³ Dru Sjodin National Sex Offender Public Website. In: *U.S. Department of Justice* [online]. [2021-07-07]. Available at: <<https://www.nsopw.gov/>>.

⁷⁴ Sexual Offences Act 2003. In: *legislation.gov.uk* [online]. [2021-07-07]. Available at: <<https://www.legislation.gov.uk/ukpga/2003/42/contents>>.

⁷⁵ U.S. Department of Justice. *Global Survey of Sex Offender Registration and Notification Systems*. 2016, p. 3.

⁷⁶ National Gazzete, No. 143/2012-3030. In: *zakon.hr* [online]. [2021-07-07]. Available at: <<https://www.zakon.hr/z/554/Zakon-o-pravnim-posljedicama-osude,-kaznenoj-evidenciji-i-rehabilitaciji>>.

of criminal offences of sexual abuse and the exploitation of children. The information from a criminal conviction and the list are kept by the authorized ministry and are restricted for the use of judicial bodies and administrative bodies related to status of individual.⁷⁷ Specifically, information from the list of sex offenders can be viewed upon request from the institutions who work with or for the benefit of children.⁷⁸ The time frame that the information is kept depends on the gravity of the criminal offence.

A similar approach is present in **Serbia**, where the special *Law on Specific Measures of Prevention Criminal Offences Against Sexual Freedom of Juveniles* (“Maria’s Code”)⁷⁹ was adopted in 2013 and articles 13-15 require the country to keep special records about the offenders of crimes against the sexual freedom of juveniles. These records are kept by the Ministry of Justice and are not erasable with the passage of time. The information in the records is confidential. According to the article 15, paragraph 1, they can be given to the judicial bodies when a criminal procedure is being conducted, or to the police office, or the office for execution of criminal sanctions, when that data is required for their jurisdiction. When the state bodies or private institutions that work with juveniles are recruiting an individual who will work with juveniles, they are obligated to request data from these records.

In **France**, Chapter II, provisions of article 706-53-1 to 12 of *Code of Criminal Procedure of France*, regulates the *National Automated Sexual Offender’s Register*.⁸⁰ It keeps the data of all the sex offenders, and it is under the jurisdiction of the Ministry of Justice. It was established to prevent sex offences with the purpose to “collate, retain, and communicate to the authorized persons”⁸¹ information on convicted sex offenders. An interesting fact is, the data of not yet finalized verdicts are also to be delivered to the Ministry of Justice.

5. ESTABLISHMENT OF SEX OFFENDER REGISTRIES IN BOSNIA AND HERZEGOVINA

The criminal law of Bosnia and Herzegovina, due to its specific state organization, has been divided into several levels of authority: the national level of Bosnia and Herzegovina through *Criminal Code of Bosnia and Herzegovina*,⁸² the entity levels: *Criminal Code of*

⁷⁷ Article 12. points a-k.

⁷⁸ Article 13. (4). of the Code.

⁷⁹ Official Gazette No. 32/13. In: *parlament.gov.rs* [online]. [2020-02-26]. Available at:

<<http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2013/559-13Lat.pdf>>.

It is named after a seven year old girl Marija Jovanović from Serbia, that has been raped and killed in 2010 by her neighbor, who has been convicted twice for pedophilia. In: *SD Srbija Danas* [online]. [2020-02-26]. Available at: <srbijadanas.com>.

⁸⁰ Code of Criminal Procedure of France. In: *legislationline.org* [online]. [2020-02-26]. Available at:

<<https://www.legislationline.org/documents/section/criminal-codes/country/30/France/show>>.

⁸¹ Article 706-53-1 of the Code.

⁸² Criminal Code of Bosnia and Herzegovina. Official Gazette No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 32/07, 8/10, 47/14, 22/15, 40/15. In: *Unofficial, consolidated version – Official Gazette of Bosnia and Herzegovina* [online]. [2020-02-26]. Available at: <http://www.sudbih.gov.ba/files/docs/zakoni/en/Criminal_Code_of_BH_eng.pdf>.

Federation of Bosnia and Herzegovina,⁸³ *Criminal Code of Republika Srpska*,⁸⁴ and the level of the Brčko District BH through its *Criminal Code*.⁸⁵ These criminal codes contain general provisions about rehabilitation and criminal registries for perpetrators of all criminal offences. However, a distinction in the regulation of registries is visible in the Republika Srpska which has *lex specialis* titled the *Code on the Special Registry of Convicted Persons for Sexual Abuse and Exploitation of Children* that provides provisions about sex registries for sex offenders.

It is visible from all the criminal codes in Bosnia and Herzegovina that criminal records⁸⁶ are kept for all perpetrators of criminal offenses until a certain period of time. Upon the expiration of the prescribed time period in the registry, the individuals are legally rehabilitated and their conviction is erased from the registry. All the data from the registries is confidential. An ex-convict is entitled to request their information from the registry in order to achieve rights related to their status. The registry is universal for all criminal offenses and is understood to be one of the legal consequences of a conviction. However, that registry is not the same as a sex offender registry, since a sex offender registry is more specific and contain data specifically for sex offenders. According to the positive law in Bosnia and Herzegovina, the deletion of records (legal rehabilitation) from those registries is possible with the passage of time, if the convicted person does not reoffend. The right to deletion is achieved by the force of law. The time frame within which an individual must remain law abiding in order to have their information deleted is not the same for all criminal offenses. Instead, they are categorized based on the sanction prescribed by the law, so that the time frame for minor offenses is shorter than the time frame for more serious offenses.⁸⁷

*The Code on the Special Registry of Convicted Persons for Sexual Abuse and Exploitation of Children*⁸⁸ (hereinafter “Srpska Code”) is the first law in Bosnia and Herzegovina that

⁸³ Criminal Code of Federation of Bosnia and Herzegovina. Official Gazette No. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16. In: “Official Gazette” of the Federation of Bosnia and Herzegovina, 36/03 [online]. [2020-02-26]. Available at: <https://advokat-prnjavorac.com/legislation/fbih_criminal_code.pdf>.

⁸⁴ Criminal Code of Republika Srpska. Official Gazette No. 64/17. In: *tuzilastvobih.gov.ba* – “Official Gazette” of Republika Srpska 49/03, 108/04 [online]. [2020-02-26]. Available at: <http://www.tuzilastvobih.gov.ba/files/docs/zakoni/RS_Criminal_Code_49_03,108_04_web.pdf>.

⁸⁵ Criminal Code of Brčko District BH. Official Gazette No. 10/03, 48/04, 6/05, 14/07, 19/07, 21/07, 2/08, 17/09, 9/13. In: *legislationline.org* [online]. [2020-02-26]. Available at: <<https://www.legislationline.org/documents/section/criminal-codes/country/40/Bosnia%20and%20Herzegovina/show>>.

⁸⁶ Article 121a of Criminal Code of Bosnia and Herzegovina, Article 125a of Criminal Code of Federation of Bosnia and Herzegovina, Article 92 of Criminal Code of Republika Srpska and Article 125a of Criminal Code of Brčko District BH.

⁸⁷ For example, for the criminal offenses with sanction of 1 to 3 years of imprisonment, not perpetrating new criminal offence within 5 years upon the execution of sanction, one gets the legal basis for deletion of records. For harder criminal offenses, the time limitation is more extensive. See more examples in: Article 125 of Criminal Code of Federation of Bosnia and Herzegovina.

⁸⁸ Has been accepted on Mart 29, 2019. Hereinafter: Code. In the Federation of Bosnia and Herzegovina the draft of the similar code exists, but it still not put in the legislative procedure. In: *narodnaskupstinars.net* [online]. [2020-02-26]. Available at: <<https://www.narodnaskupstinars.net/?q=la/akti/usvojeni-zakoni/zakon-o-posebnom-registru-lica-pravosna%C5%BEno-osu%C4%91enih-za-krivi%C4%8Dna-djela-seksualne-zloupotrebe-iskori%C5%A1tavanja-djece>>.

established registries of convicted sexual offenders. It was adopted in the entity of the Republika Srpska, based on the provisions of the Criminal Code of the Republika Srpska. It regulates the establishment of such a registry, the type of data, their usage and protection, the level of their confidentiality, and special measures regarding this type of convicted person.⁸⁹

The Registry that was established by the Srpska Code consists of confidential data for a particular group of sexual offenses, that had been perpetrated against children, such as:

- Child trafficking (Article 146 of Criminal Code of Republika Srpska);
- Intercourse with a child under the age of fifteen (Article 172 Criminal Code of Republika Srpska);
- Sexual abuse of a child over the age of fifteen (Article 173 Criminal Code of Republika Srpska);
- Encouraging the child to attend sexual activities (Article 174 Criminal Code of Republika Srpska);
- Exploitation of children for pornography (Article 175 Criminal Code of Republika Srpska),
- Exploitation of children for pornographic performances (Article 176 Criminal Code of Republika Srpska);
- Introducing children to pornography (Article 177 Criminal Code of Republika Srpska);
- Exploitation of a computer network or communication with other technical means for committing the criminal offenses of sexual abuse or exploitation of a child (Article 178 Criminal Code of Republika Srpska);
- Satisfaction of sexual passions before the child (Article 179 Criminal Code of Republika Srpska); and
- Inducing a child into prostitution (Article 180 Criminal Code of Republika Srpska).

Since the data⁹⁰ of the Registry is considered to be confidential,⁹¹ this registry is being kept by the Ministry of Internal Affairs, which is not accessible to the general public. However, it is available to provide the courts, prosecutor offices, or organs of internal affairs

⁸⁹ Article 1 of the Code.

⁹⁰ Those data, according to the Article 4 of the Code are: surname and first name, former surname and first name (if any), and for married maiden name, surname and first name if any, date of birth, surname and first name of parent and maiden name of mother; the place, city, or municipality and country of birth, identification number, citizenship, residence, or residence with indication of the address of residence at the time of execution of the judgment, the name of the court and the city or municipality on whose territory the court is located, and for the foreign court - the name of the state, the number and date of the decision of the first instance court which became final, or the decision of the higher court if that decision reversed the decision of the first instance court; name of the criminal offense with an indication of the article, paragraph and point of the law that has been applied, the type of sentence and security measure with an indication of the duration of the sentence, information on the legal consequences of the conviction, changes in the data entered with the name of the decision-making authority and the data on that decision, employment data, information relevant for the physical identification of the convicted person and his/her photograph at the time of entering the prison sentence and at the time of leaving the penitentiary, as well as at reporting to the competent organizational unit of the Ministry of Internal Affairs referred to in Article 11 of the Code; DNA profile of the convicted person, the date of imprisonment, information on the implementation of special measures prescribed by this law.

⁹¹ Article 3 paragraph (2) of the Code.

with the information from this registry.⁹² Organs and organizations, institutions and associations, whose mission it is to protect and work with children and with foreign state organs within international legal aid, are all also able to access information from the registry.⁹³

The aim of the Srpska Code is clearly stated in article 2: it is to protect children from sexual abuse and exploitation and to protect convicted people from recidivism. The method of achieving this is evident every time an employer wishes to hire an employee, the employer must first request information from the registry in order to check if that person is within the registry. Furthermore, the convicted person is obliged to personally visit the unit of the Ministry of Internal Affairs within 15 days upon execution of the sanction and continue to personally report every six months. With these notifications, the movement of the convicted perpetrator is easily controlled.

The Special Measure on the Protection of Children from Sexual Abuse and Exploitation was prescribed in article 13 of the Srpska Code. Namely, ex-convicts of the above-mentioned group of criminal offenses have to refrain from attending children's gatherings and facilities where children gather, such as school buildings, school yards, kindergartens, playgrounds, playrooms, and children's events.

5.1 Lessons for Bosnia and Herzegovina?!

It might be said that at the time of their establishment, sex offender registries were a welcomed mechanism aimed at preventing sex offenders from re-offending. However, more than two decades have passed since their establishment and propagation throughout the world and their main challenges and failures have become apparent and have drawn criticism. It is apparent that the main arguments in favor of the establishment of sex offender registries were the prevention of crime and to fight against recidivism. Within those two decades, states put forth an effort to establish their own registries. The wave to adopt sex offender registries was so great that even in states that had not considered them before, their enforcement were given through regional conventions and recommendations. The crystallized problematic side of their establishment should make states reconsider if their system of sex offender registries is optimal or it should they be managed in another way. The primary question is whether they meet their intended goal when multiple scientific studies have showed that they do not significantly change the rate of recidivism nor the prevention of crime.

The truth is that they bring security to society as it is known where the threat of possible victimization lies, allowing the threat to be observed, thus not giving the opportunity to the ex-convict to recommit a sex offense. However, if it is shown that not every ex-sex offender will reoffend, then why, in many countries, without requiring a previous risk assessment for recidivism, the obligation for submitting the data remains the same for all sex offenders equally. If the science works together with the legal practice to protect the public and prevent recidivism, then why do some states establish of sex registries for all

⁹² Article 7 of the Code.

⁹³ Article 8 (1) and 9 of the Code.

sex offenders with uniform obligations of notification, without considering making sex offender registries an obligation only for risky cases, while giving the possibility to reintegrate into society and to try living a normal life after paying all their debts to the society for the ones with a lesser risk or no risk at all? The importance of risk assessment is also noticed by many scholars. It classifies sex offenders according to their danger and risk of recidivism and is able to put some limitations on the data required to be entered. Evans establishes that the “probability of sexual re-offence on the basis of actual recidivism rates of other convicted sex offenders with the same characteristics and community notification is limited to dangerous offenders with high or moderate risk of recidivism.”⁹⁴ Positive tendency within some countries has also been recognized by Logan, who notes that in those states the evaluation is done on a case by case basis in order to check their recidivism tendency.⁹⁵ Many authors suggest that risk assessment can be conducted using two approaches:

1. risk prediction (predicting likelihood of recidivism over a period of time); and
2. risk management-process of identifying and responding to changes in sex offender risk.

Based on these scientific assumptions and the results of the application of sex offender registries, it is required for all states to reconsider the general *all sex offender inclusive registries* approach and to introduce the risk assessments approach, in order to achieve the prevention (for the risky cases) and preservation of human rights and reintegration (for less risky cases).

The lesson that Bosnia and Herzegovina should learn is layered in several levels. First, the ground level, Bosnia and Herzegovina should have a unified approach towards its sex offenders throughout its entire territory. With the existing regulation, sex offender regulation is present only in one of its entities. In the practice, that would mean that citizens of one state do not have the same legal position depending on where they live. Currently, offenders in the Federation of Bosnia and Herzegovina and Brčko District will not be in a sex offender registry because they have not been established in those entities, while sex offenders from the territory of Republika Srpska are registered under that entities legislation and they feel all the consequences of its establishment regarding its individual rights and possibilities for reintegration. This entity by entity practice is discriminatory and results in legal uncertainty for citizens of the same state. Legislative procedures must be passed to harmonize laws. Introduction of the sex offender registry in the Republika Srpska only, without waiting on the Federation of Bosnia and Herzegovina and Brčko District to do the same, was premature. Keeping in mind the nature of sex offender registries and importance of its data flow within authorized institutions, the best solution for Bosnia and Herzegovina would be the establishment of one sex offender registry on the level of the state of Bosnia and Herzegovina.

Regarding its content, it is obvious that Republika Srpska adopted the approach of having sex registries for all sex offenders, based on the criminal offense, not on risk as-

⁹⁴ BARON-EVANS, A. *American Criminal Justice Policy in a “Change” Election*. p. 358.

⁹⁵ LOGAN, W. A. *A Study in “Actuarial Justice”: Sex Offender Classification Practice and Procedure*. p. 598.

assessment. The positive side of the registry is that the data is confidential and managed by the Ministry of Internal Affairs, so that the negative consequences of public registries, visible (for everyone) in other countries, can be avoided. However, it is of high importance to reconsider the possibility of whether to establish a risk assessment for ex-convicts so that only truly risky ones are included in the registry, or to base it on the risk assessment in order to vary the duration that data in sex offender registries exists for ex-convicts of different levels of risk. In that way, the negative implications of establishing sex offender registries for ex-convicts might be avoided and prevention can be accomplished.

In the context of above mentioned other countries, it can be said that together with general provisions about legal consequences of conviction, Bosnia and Herzegovina has only partially entered in the discourse about sex offender registries - through legislation of Republika Srpska. The data are being kept confidential just like in examples of Croatia and Serbia and are given for administration to relevant ministries. Bosnia and Herzegovina is a member state of the Council of Europe, so provisions of the Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse about collection of data related to identity of sex offenders are referring to Bosnia and Herzegovina as well and the easiest and methodologically best way for the flow of data would be to have one sex offenders registry. That direction is additionally desired given that Bosnia and Herzegovina aims to become a member state of the European Union, so the provisions of Directive 2011/92/EU and Resolution 1733/10 will be referring to it when integrated into EU and the harmonization with the EU law in this topic is something that it has to take into consideration on time.

6. CONCLUSION

The existence of sex offender registries brings a feeling of safety and prevents re-offending. They are an additional burden imposed by the state on those who have paid back their debt to society for the criminal offence, yet they still publicly bear the scars of their criminality. The United States pioneered the establishment of sex offender registries and introduced the system of both registration and notification, which are publicly accessible, but when it comes to the application of sex registries, the tier system is being applied. Other states presented above have introduced sex offender registries for all sex offenders, but tend to keep the data in those registries confidential. With the establishment of registries, it is impossible for sex offenders to be employed in the fields of work that includes working with *sex offences-related* vulnerable groups of people (such as children) and moreover, the approach of *keeping an eye on the offender* prevents them from re-offending. Some regional documents suggest these registries to be established in the states that have not introduced them yet, evidencing an international determination for the sex offender registries approach. However, in some countries with sex offender registries, the years of their application have unforeseen problematic implications for the offender: psychological, social, and economic consequences that might question the preservation of fundamental rights of ex-convicts. It has been shown through various scientific research that the first assumption that sex offenders tend to reoffend was not quite true. The risk assessment approach is the desirable approach in the process of the establishment of a sex

offender registry, because it is based on the profile of the perpetrator and the risk that they carry, so it is not purely objectively based on the criminal offence. The risk assessment approach would require the entry of data for individuals that truly are a risk for society of recidivism, but would exclude or lessen the burden, for the ones who do not represent a great threat to society. In that way, both aims would be accomplished: prevention of crime and preservation of human rights.

Bosnia and Herzegovina is aware of the importance of establishment of the sex offender registry. However, it is established only in one part of its territory. It is crucial for it to have the law harmonized within its entire territory to avoid both discrimination of its citizens and lack of legal certainty. In the Republika Srpska, a purely objective approach has been used in their establishment, since the requirement of data delivery stands for all sex offenders. This paper advocates that *lege ferenda* involves risk assessment and for the sake of registry data flow, the sex registry must be established on the state level.